

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2944
OFFERED BY MR. BARTON**

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Electricity Competition and Reliability Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

TITLE I—OPEN TRANSMISSION ACCESS

Sec. 101. Clarification of State authority regarding retail electric competition;
clarification of Federal and State jurisdiction.

Sec. 102. Open access for all transmitting utilities.

Sec. 103. Regional transmission organizations.

Sec. 104. Regional transmission siting agencies.

Sec. 105. Expansion of interstate transmission facilities.

Sec. 106. Conforming amendments.

TITLE II—ELECTRIC RELIABILITY

Sec. 201. Electric reliability.

TITLE III—CONSUMER PROTECTION

Sec. 301. Electric supplier information disclosure.

Sec. 302. Consumer privacy.

Sec. 303. Electric supply unfair trade practices.

Sec. 304. Universal and affordable service.

Sec. 305. Definitions.

TITLE IV—MERGERS

Sec. 401. Electric company mergers and disposition of property.

Sec. 402. Elimination of review by the Nuclear Regulatory Commission.

Sec. 403. Antitrust savings clause.

TITLE V—PROMOTING COMPETITION

Subtitle A—Retail Reciprocity

Sec. 501. Retail reciprocity.

Subtitle B—Public Utility Holding Company Act of 1935

- Sec. 511. Definitions.
- Sec. 512. Repeal of the Public Utility Holding Company Act of 1935.
- Sec. 513. Federal access to books and records.
- Sec. 514. State access to books and records.
- Sec. 515. Exemption authority.
- Sec. 516. Affiliate transactions.
- Sec. 517. Applicability.
- Sec. 518. Effect on other regulations.
- Sec. 519. Enforcement.
- Sec. 520. Savings provisions.
- Sec. 521. Implementation.
- Sec. 522. Transfer of resources.
- Sec. 523. Effective date.
- Sec. 524. Conforming amendment to the Federal Power Act.

Subtitle C—Public Utility Regulatory Policies Act of 1978

- Sec. 531. Prospective repeal.
- Sec. 532. Recovery of costs.
- Sec. 533. Definitions.

Subtitle D—Additional Provisions Promoting Competition

- Sec. 541. Aggregation.
- Sec. 542. Interconnection.

TITLE VI—FEDERAL ELECTRIC UTILITIES

Subtitle A—Tennessee Valley Authority

- Sec. 601. Definitions.
- Sec. 602. Wholesale competition in the Tennessee Valley Region.
- Sec. 603. Tennessee Valley Authority power sales.
- Sec. 604. Tennessee Valley Authority electric generation facilities.
- Sec. 605. Renegotiation of all requirements power contracts.
- Sec. 606. Regulation of Tennessee Valley Authority transmission system.
- Sec. 607. Regulation of Tennessee Valley Authority distributors.
- Sec. 608. Stranded cost recovery.
- Sec. 609. Application of antitrust law.
- Sec. 610. Savings provision.

Subtitle B—Bonneville Power Administration

- Sec. 621. Definitions.
- Sec. 622. Regulation of Bonneville Transmission System.
- Sec. 623. Surcharge on transmission rates to recover nonrecoverable power costs.
- Sec. 624. Limit on retail sales by Bonneville Power Administration.
- Sec. 625. Acquisition of new major generating resources.
- Sec. 626. Application of antitrust law.

Sec. 627. Conforming amendments.

Subtitle C—Other Power Marketing Administrations

Sec. 631. Definitions.

Sec. 632. Wholesale power sales by Federal power marketing administrations.

Sec. 633. Regulation of Federal power marketing administration transmission systems.

Sec. 634. Accounting.

Sec. 635. Application of antitrust law.

TITLE VII—ENVIRONMENTAL PROVISIONS

Sec. 701. Renewable energy production incentive.

Sec. 702. Net metering.

Sec. 703. State renewable energy portfolio standards.

TITLE VIII—PROVISIONS RELATING TO INTERNAL REVENUE CODE

【Text of title VIII identical to text of title VIII of H.R. 2944】

TITLE IX—MISCELLANEOUS PROVISION

Sec. 901. Study.

Sec. 902. Study of State regulation.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Electricity is generated, transmitted, dis-
4 tributed, and sold in interstate commerce and used
5 in virtually every home, commercial enterprise, and
6 manufacturing facility in the United States and sub-
7 stantially affects interstate commerce in other goods
8 and services.

9 (2) Americans consume electricity worth more
10 than \$250,000,000,000 a year, approximately half of
11 which is for residential purposes. The monthly elec-
12 tric utility bill is one of the largest expenses for most
13 households.

1 (3) Traditional monopoly rate-of-return regula-
2 tion of electricity has stifled competition, resulting in
3 high electricity rates for many consumers and few
4 incentives for technological innovation and good cus-
5 tomer service by electric utilities.

6 (4) Twenty-four States, representing over
7 163,000,000 people and over 60 percent of the pop-
8 ulation of the United States, have approved pro-
9 grams to allow consumers to choose their retail elec-
10 tric suppliers. State retail competition laws have ad-
11 dressed stranded cost recovery, public benefits, and
12 other issues, and Congress encourages the remaining
13 States to address stranded cost recovery as they
14 open their retail electric markets.

15 (5) High electricity rates are regressive, placing
16 a disproportionate burden on low-income ratepayers.
17 A competitive electric generation industry will pro-
18 vide benefits to all consumers by fostering fairness,
19 innovation, and efficiency, rather than allow cost
20 shifting that lowers rates to some consumers but
21 raises rates to others.

22 (6) The cost of electricity has a direct effect on
23 the price, profitability, and competitiveness of goods
24 and services produced in the United States.

1 (7) Lower priced electricity and improved reli-
2 ability can be realized by competition among electric
3 suppliers.

4 (8) The development of vigorous competition in
5 the retail electric markets will—

6 (A) reduce the costs of electric energy to
7 even the smallest consumers of electricity;

8 (B) create jobs as American businesses are
9 able to lower costs and better compete in world
10 markets and against foreign competition here at
11 home;

12 (C) result in a more efficient utility indus-
13 try; and

14 (D) improve the services available to con-
15 sumers.

16 (9) Federal programs to benefit rural con-
17 sumers have succeeded, and rural America has been
18 electrified. However, competition will assure reliable,
19 reasonably priced rural electric service. Rural con-
20 sumers should be able to purchase a broad range of
21 services from retail electric suppliers.

22 (10) The Nation's interconnected electricity
23 generation, transmission, and local distribution sys-
24 tems critically affect the economy and productivity

1 of the United States, and the health, safety, welfare,
2 and security of all Americans.

3 (11) Congress has authority to enact laws,
4 under the Commerce Clause of the United States
5 Constitution, regarding the generation, transmission,
6 distribution, and sale of electric energy in interstate
7 commerce.

8 (12) The success of competition in the whole-
9 sale electric market under the Energy Policy Act of
10 1992 and open access under Orders No. 888 and
11 889 of the Federal Energy Regulatory Commission,
12 as well as innovations in electric generation and
13 transmission technologies, indicate that retail elec-
14 tric competition will substantially benefit all classes
15 of United States electric consumers, including resi-
16 dential, commercial, industrial, and other consumers.

17 (b) PURPOSE.—The purpose of this Act is to benefit
18 American electric consumers through lower electric rates,
19 higher quality services, and a more robust United States
20 economy by encouraging retail and wholesale competition
21 in electric markets and to provide consumers with reliable
22 electric service, and for other purposes.

1 **TITLE I—OPEN TRANSMISSION**
2 **ACCESS**

3 **SEC. 101. CLARIFICATION OF STATE AUTHORITY REGARD-**
4 **ING RETAIL ELECTRIC COMPETITION; CLARI-**
5 **FICATION OF FEDERAL AND STATE JURISDIC-**
6 **TION.**

7 (a) STATE AUTHORITY TO ORDER RETAIL ELECTRIC
8 COMPETITION.—Section 201(b) of the Federal Power Act
9 is amended by adding the following new paragraph after
10 paragraph (2):

11 “(3) This Act shall not affect the authority of a State
12 or municipality to require retail electric competition or to
13 require the unbundling of transmission and local distribu-
14 tion service for the delivery of electric energy directly to
15 a retail electric consumer.”.

16 (b) CLARIFICATION OF FEDERAL AND STATE JURIS-
17 DICTION.—(1) Section 201(a) of the Federal Power Act
18 (16 U.S.C. 824(a)) is amended as follows:

19 (A) By inserting after “transmission of electric
20 energy in interstate commerce” the following: “, in-
21 cluding the unbundled transmission of electric en-
22 ergy sold at retail,”.

23 (B) By striking “such Federal regulation, how-
24 ever, to extend only to those matters which are not
25 subject to regulation by the States.” and inserting in

1 lieu thereof “such Federal regulation shall not ex-
2 tend, however, to any bundled retail sale of electric
3 energy, to any local distribution service component
4 of any unbundled retail sale of electric energy, or to
5 any retail sale component of any unbundled retail
6 sale of electric energy, which are each subject to reg-
7 ulation by the States.”.

8 (2) Section 201(b)(1) of the Federal Power Act (16
9 U.S.C. 824(b)(1)) is amended as follows:

10 (A) By inserting after “the transmission of
11 electric energy in interstate commerce” the fol-
12 lowing: “, including the unbundled transmission of
13 electric energy sold at retail,”.

14 (B) In the last sentence, before the period by
15 inserting “, nor shall the Commission have jurisdic-
16 tion over the transmission of any bundled retail sale
17 of electric energy”.

18 (c) DEFINITIONS OF TYPES OF SALES.—Section 3 of
19 the Federal Power Act (16 U.S.C. 796) is amended by
20 adding at the end the following:

21 “(26) The term ‘bundled retail sale of electric
22 energy’ means the sale of electric energy to a retail
23 electric consumer in which the electric energy and
24 transmission services are not sold separately.

1 “(27) The term ‘local distribution service’
2 means all services necessary to, or customarily pro-
3 vided in, the delivery of electric energy to a retail
4 electric consumer through local distribution facilities,
5 including the construction, maintenance, and oper-
6 ation of local distribution facilities, the metering and
7 billing of retail sales, and any related accounting,
8 management, and other services.

9 “(28) The term ‘unbundled retail sale of elec-
10 tric energy’ means the sale of electric energy to a re-
11 tail electric consumer in which electric energy and
12 transmission service or local distribution service are
13 sold separately.

14 “(29) The term ‘unbundled transmission of
15 electric energy sold at retail’ means the transmission
16 of electric energy to a retail electric consumer if the
17 electric energy and the service of transmitting it are
18 sold separately.”.

19 (d) STATE PUBLIC PURPOSE CHARGES.—Section
20 201(b) of the Federal Power Act is amended by adding
21 the following new paragraph after paragraph (3):

22 “(4) This Act shall not affect the authority of a State
23 or municipality to require as a charge for delivery of elec-
24 tric energy to, or as a condition for the purchase or receipt
25 of electric energy by, any retail electric consumer located

1 in such State the payment of any charge deemed necessary
2 by such State or municipality for any purpose, including
3 any of the following:

4 “(A) To recover transition costs.

5 “(B) To ensure that adequate electric service is
6 available to all retail electric consumers served by a
7 local distribution company.

8 “(C) To ensure and enhance the reliability of
9 retail electric service.

10 “(D) To fund assistance to low-income retail
11 electric consumers.

12 “(E) To encourage environmental, emerging en-
13 ergy technology, energy efficiency, or energy con-
14 servation programs.

15 “(F) To provide for transition costs of electric
16 utility workers.

17 Nothing in this paragraph shall require a State or munic-
18 ipality to impose any such charges.”.

19 (e) DETERMINATION OF TRANSMISSION FACILI-
20 TIES.—Section 201 of the Federal Power Act is amended
21 by adding the following new subsection at the end thereof:

22 “(h) DETERMINATION OF TRANSMISSION FACILI-
23 TIES.—

24 “(1) DETERMINATION.—Upon application by a
25 State commission, electric utility, transmitting util-

1 ity, or local distribution company, the Commission
2 may determine whether a particular facility used for
3 the transportation of electric energy is a trans-
4 mission facility subject to the jurisdiction of the
5 Commission.

6 “(2) COMMISSION FINDINGS.—The Commission
7 shall make a determination under paragraph (1) in
8 accordance with the following factors associated with
9 the facility:

10 “(A) Function and purpose.

11 “(B) Size.

12 “(C) Location.

13 “(D) Voltage level and other technical
14 characteristics.

15 “(E) Historical, current and planned usage
16 patterns.

17 “(F) Interconnection and coordination with
18 other facilities.

19 “(G) Any other factor the Commission
20 deems relevant.

21 In making such determination, the Commission shall
22 consider any position taken by the appropriate State
23 commission.”.

1 **SEC. 102. OPEN ACCESS FOR ALL TRANSMITTING UTILI-**
2 **TIES.**

3 (a) OPEN ACCESS TRANSMISSION AUTHORITY.—Sec-
4 tion 206 of the Federal Power Act is amended by adding
5 the following new subsection after subsection (d):

6 “(e) OPEN ACCESS TRANSMISSION SERVICES.—

7 “(1) PUBLIC UTILITIES.—Under section 205
8 and this section, the Commission may, by rule or
9 order, require public utilities to provide transmission
10 services on a not unduly discriminatory or pref-
11 erential basis, subject to section 212(h), and may
12 authorize recovery of wholesale stranded costs, as
13 defined by the Commission, arising from any re-
14 quirement to provide transmission services on such
15 a basis. This paragraph applies to any rule or order
16 promulgated by the Commission before, on, or after
17 the date of enactment of this subsection.

18 “(2) TRANSMITTING UTILITIES.—

19 “(A) Subject to section 212(h), the Com-
20 mission may, by rule or order, require transmit-
21 ting utilities that are not public utilities (other
22 than the Federal power marketing administra-
23 tions, the Tennessee Valley Authority, and utili-
24 ties to which section 212(k) applies) to provide
25 transmission services—

1 “(i) at rates that are comparable to
2 those each such transmitting utility
3 charges itself and that are not unduly dis-
4 criminatory or preferential, and

5 “(ii) on terms and conditions (not re-
6 lating to rates) that are comparable to
7 those required under paragraph (1) for
8 transmission service provided by public
9 utilities.

10 In exercising its authority under this subpara-
11 graph, the Commission may remand trans-
12 mission rates to a transmitting utility for re-
13 view and revision where necessary. The Com-
14 mission may authorize recovery of wholesale
15 stranded costs, as defined by the Commission,
16 arising from any requirement to provide trans-
17 mission service under this paragraph.

18 “(B)(i) Within 180 days after the date of
19 enactment of this subsection, after notice and
20 opportunity for comment, the Commission shall
21 adopt rules providing criteria and procedures to
22 exempt certain transmitting utilities from sub-
23 paragraph (A). The Commission shall exempt
24 from subparagraph (A) any transmitting utility
25 that is a small electric utility that does not own

1 or operate any transmission facilities that are
2 part of the bulk-power system, or that meets
3 other criteria the Commission determines to be
4 in the public interest.

5 “(ii) The procedures established by the
6 Commission shall permit exemptions, after no-
7 tice and opportunity for comment, based on a
8 letter application containing a sworn statement,
9 by a representative legally authorized to bind
10 the applicant, attesting to the facts dem-
11 onstrating that the applicant meets the exemp-
12 tion standards. A good faith application for an
13 exemption shall be deemed granted unless,
14 within 60 days of its receipt of such application,
15 the Commission makes a determination that the
16 applicant does not meet the exemption criteria.

17 “(iii) Upon complaint of any electric utility
18 or transmitting utility and after notice and op-
19 portunity for comment, the Commission may re-
20 voke an exemption if it determines the trans-
21 mitting utility does not satisfy the exemption
22 criteria. In determining whether a transmitting
23 utility owns or operates transmission facilities
24 that are part of the bulk-power system, the
25 Commission shall consider any position taken

1 by the electric reliability organization or an af-
2 filiated regional reliability entity in the region
3 where the transmitting utility is located.

4 “(iv) For purposes of this subparagraph,
5 the term ‘small electric utility’ means an elec-
6 tric utility that sells no more than 4,000,000
7 megawatt hours of electric energy per year; and
8 the terms ‘affiliated regional reliability entity’,
9 ‘bulk-power system’, and ‘electric reliability or-
10 ganization’ have the meanings given such terms
11 in section 217(a).

12 “(3) CERTAIN WHOLESale STRANDED
13 COSTS.—The Commission shall authorize recovery of
14 wholesale stranded costs of a public utility that
15 occur when retail electric consumers cease to be
16 served by that public utility by reason of the estab-
17 lishment of a nonregulated electric utility serving
18 such consumers. In calculating such wholesale
19 stranded costs, the Commission shall use a reason-
20 able expectation period that is based on the weighted
21 average remaining useful life of generation assets
22 owned or power purchased under contract by the
23 public utility and included in wholesale or retail
24 rates in effect on July 9, 1996. This paragraph shall
25 apply to wholesale stranded cost determinations

1 made by the Commission before, on, or after the
2 date of enactment of this paragraph. For purposes
3 of this paragraph, the term ‘nonregulated electric
4 utility’ means any electric utility other than a State
5 regulated electric utility”.

6 (b) RETAIL WHEELING IN RETAIL COMPETITION
7 STATES.—Section 212(h) of the Federal Power Act is
8 amended as follows:

9 (1) By inserting “(1)” before “No”.

10 (2) By striking “(1)”, “(2)”, “(A)”, and “(B)”
11 and inserting in their places “(A)”, “(B)”, “(i)”,
12 and “(ii)” respectively.

13 (3) By striking from redesignated paragraph
14 (1)(B)(ii) “the date of enactment of this subsection”
15 and inserting “October 24, 1992,”.

16 (4) By adding the following new paragraph at
17 the end:

18 “(2) Notwithstanding paragraph (1), the Commission
19 may issue an order that requires the transmission of elec-
20 tric energy for purposes of a sale of such energy to retail
21 electric consumers served by local distribution facilities
22 that are subject to open access, consistent with State
23 law.”.

1 (c) CONFORMING AMENDMENTS.—(1) Section 3(23)
2 of the Federal Power Act (16 U.S.C. 796) is amended to
3 read as follows:

4 “(23) TRANSMITTING UTILITY.—The term
5 ‘transmitting utility’ means any entity (including a
6 State or municipal entity) that owns or operates fa-
7 cilities used for the transmission of electric energy in
8 interstate commerce.”.

9 (2) Section 3(24) of the Federal Power Act is amend-
10 ed to read as follows:

11 “(24) ‘transmission services’ means the trans-
12 mission of electric energy sold or to be sold.”.

13 (3) Section 211(a) of the Federal Power Act is
14 amended by striking “for resale”.

15 (4) Section 212(a) of the Federal Power Act is
16 amended by striking “wholesale” each time it appears, ex-
17 cept the last time.

18 (5) Section 3 of the Federal Power Act is amended
19 by adding the following at the end thereof:

20 “(30) LOCAL DISTRIBUTION COMPANY.—The
21 term ‘local distribution company’ means any entity
22 which owns, controls, or operates local distribution
23 facilities.

24 “(31) LOCAL DISTRIBUTION FACILITIES.—The
25 term ‘local distribution facilities’ means any facilities

1 used for the local distribution of electric energy.
2 Such term does not include any facilities determined
3 under section 201(h) to be transmission facilities.

4 “(32) OPEN ACCESS.—The term ‘open access’,
5 with respect to local distribution facilities, means
6 that the local distribution company that owns, con-
7 trols, or operates the facilities offers not unduly dis-
8 criminatory or preferential access to the facilities.

9 “(33) RETAIL ELECTRIC CONSUMER.—The
10 term ‘retail electric consumer’ means any person
11 who purchases electric energy for ultimate consump-
12 tion.

13 “(34) RETAIL ELECTRIC SUPPLIER.—The term
14 ‘retail electric supplier’ means any person who sells
15 electric energy to a retail electric consumer for ulti-
16 mate consumption.

17 “(35) STATE REGULATED ELECTRIC UTILITY.—
18 The term ‘State regulated electric utility’ means any
19 electric utility with respect to which a State commis-
20 sion has ratemaking authority.”.

21 (d) FOREIGN COMMERCE.—(1) Section 201(c) of the
22 Federal Power Act (16 U.S.C. 824(c)) is amended by
23 striking “thereof:” and inserting “thereof (including con-
24 sumption in a foreign country),”.

1 (2) Section 202(f) of the Federal Power Act is re-
2 pealed.

3 **SEC. 103. REGIONAL TRANSMISSION ORGANIZATIONS.**

4 (a) FINDINGS.—The Congress—

5 (1) finds that the formation of regional trans-
6 mission organizations will improve the transmission
7 of electric energy in interstate commerce and the re-
8 liability of the bulk-power system; and

9 (2) encourages the formation of regional trans-
10 mission organizations.

11 (b) REGIONAL TRANSMISSION ORGANIZATIONS.—

12 Section 202 of the Federal Power Act is amended by add-
13 ing the following new subsections after subsection (g):

14 “(h) REGIONAL TRANSMISSION ORGANIZATIONS.—

15 “(1) IN GENERAL.—After notice and an oppor-
16 tunity for a hearing, the Commission shall approve
17 an application by two or more transmitting utilities
18 to establish or join a regional transmission organiza-
19 tion if the Commission determines the regional
20 transmission organization meets the standards in
21 paragraph (2). The Commission shall apply the
22 standards in paragraph (2) without regard to the
23 specific structure, type, or form of proposed regional
24 transmission organization. The Commission may ap-
25 prove a regional transmission organization that does

1 not meet all the standards in paragraph (2) if the
2 Commission determines that the regional trans-
3 mission organization contains features that are con-
4 sistent with or superior to the standards listed in
5 paragraph (2).

6 “(2) STANDARDS FOR REGIONAL TRANSMISSION
7 ORGANIZATIONS.—The Commission shall make a de-
8 termination under paragraph (1) in accordance with
9 the following standards:

10 “(A) INDEPENDENCE.—The regional
11 transmission organization must be independent,
12 and no entity or class of entities may exercise
13 control over the operation of the regional trans-
14 mission organization.

15 “(B) SCOPE AND CONFIGURATION.—The
16 regional transmission organization must operate
17 transmission facilities that comprise an appro-
18 priate scope and regional configuration. In de-
19 termining whether a regional transmission orga-
20 nization contains an appropriate scope and con-
21 figuration, the Commission shall consider the
22 following factors:

23 “(i) Performance of essential regional
24 transmission organization functions.

25 “(ii) Electricity trading patterns.

1 “(iii) Exercise of market power not
2 subject to State regulation.

3 “(iv) Existing control areas.

4 “(v) Existing regional transmission
5 entities.

6 “(vi) Contiguity of geographic area.

7 “(vii) Interconnection of regional
8 transmission organization transmission
9 systems.

10 “(viii) International boundaries.

11 “(C) OPERATIONAL AUTHORITY.—The re-
12 gional transmission organization must possess
13 operational authority over all transmission fa-
14 cilities under its control.

15 “(D) EXPANSION.—The regional trans-
16 mission organization must be responsible (i) for
17 planning necessary additions and upgrades to
18 the transmission system under the operational
19 control of the regional transmission organiza-
20 tion that will enable it to provide efficient, reli-
21 able, not unduly discriminatory or preferential
22 transmission service; and (ii) for coordinating
23 such efforts with the appropriate State authori-
24 ties.

1 “(E) OTHER STANDARDS.—The regional
2 transmission organization shall meet any other
3 standards that the Commission determines to
4 be in the public interest.

5 “(3) FEDERAL TRANSMITTING UTILITIES.—The
6 Tennessee Valley Authority, the Bonneville Power
7 Administration, the Southwestern Power Adminis-
8 tration, and the Western Area Power Administration
9 are each authorized to participate in a regional
10 transmission organization after conducting a public
11 process in the relevant region to receive comments.
12 Notwithstanding any other law, participation may
13 include delegation of operation and control of the
14 transmission system concerned to a regional trans-
15 mission organization or other method of participa-
16 tion, under terms and conditions the Tennessee Val-
17 ley Authority or the power marketing administration
18 concerned determines necessary or appropriate, in-
19 cluding being bound by operational and other orders
20 of the regional transmission organization and by the
21 results of arbitration of disputes with the organiza-
22 tion or with other participants.

23 “(4) STATE AUTHORITY NOT AFFECTED.—
24 Nothing in this subsection affects the authority of

1 States to regulate transmission facility maintenance,
2 planning, siting, and other utility functions.

3 “(5) INCENTIVE TRANSMISSION PRICING POLI-
4 CIES.—The Commission shall encourage incentive
5 transmission pricing policies for regional trans-
6 mission organizations approved under paragraph (1)
7 and comparable transmission organizations approved
8 by the Commission before the date of enactment of
9 this subsection. Such pricing policies include policies
10 that—

11 “(A) promote the formation of regional
12 transmission organizations;

13 “(B) limit the charging of multiple rates
14 for transmission service over the transmission
15 facilities operated by the regional transmission
16 organization or comparable transmission orga-
17 nization, except that a reasonable transition pe-
18 riod may be used before eliminating such rates;

19 “(C) minimize the shifting of costs among
20 existing customers of the transmitting utilities
21 within the regional transmission organization or
22 comparable transmission organization;

23 “(D) encourage the efficient and reliable
24 operation of the transmission system and sup-
25 ply of transmission services through congestion

1 management, performance-based or incentive
2 ratemaking, and other measures; and

3 “(E) encourage efficient and adequate in-
4 vestment in and expansion of the transmission
5 facilities owned or controlled by the regional
6 transmission organization or comparable trans-
7 mission organization.

8 Within 180 days after enactment of this paragraph,
9 the Commission shall establish by rule definitions
10 and standards that it determines are necessary to
11 give effect to this paragraph.”.

12 **SEC. 104. REGIONAL TRANSMISSION SITING AGENCIES.**

13 Part II of the Federal Power Act (16 U.S.C. 824 and
14 following) is amended by adding at the end the following
15 section:

16 **“SEC. 215. REGIONAL TRANSMISSION SITING AGENCIES.**

17 “(a) CONSENT.—The consent of Congress is given for
18 compacts among two or more States to establish regional
19 transmission siting agencies to—

20 “(1) facilitate coordination among the States
21 within a particular region with regard to the siting
22 of future transmission facilities;

23 “(2) carry out State transmission facility siting
24 responsibilities;

1 “(3) meet the other requirements of this section
2 and rules prescribed by the Commission under this
3 section; and

4 “(4) otherwise be consistent with the public in-
5 terest.

6 “(b) AUTHORITY.—If the Commission determines
7 that a compact meets the requirements of subsection (a),
8 the agency established under the compact has such au-
9 thority with respect to matters otherwise within the juris-
10 diction of the Commission as is expressly provided in the
11 compact and is necessary or appropriate for carrying out
12 the siting responsibilities of the agency. The Commission’s
13 determination under this section may be subject to any
14 terms and conditions the Commission determines are nec-
15 essary or appropriate to ensure that the compact is in the
16 public interest.

17 “(c) RULES.—(1) The Commission shall prescribe by
18 rule—

19 “(A) criteria for determining whether a com-
20 pact is consistent with subsection (a); and

21 “(B) standards for its administration of a re-
22 gional transmission siting agency established under
23 the compact.

24 “(2) The rule shall require that—

1 “(A) a regional transmission siting agency oper-
2 ate within a region that includes all or part of each
3 State that is a party to the compact;

4 “(B) a regional transmission siting agency be
5 composed of one or more members from each State
6 that is a party to the compact;

7 “(C) each participating State vest in the re-
8 gional transmission siting agency the authority to
9 carry out the compact and this section; and

10 “(D) the agency follow reasonable procedures in
11 making its decisions, in governing itself, and in car-
12 rying out its authorities under the compact, includ-
13 ing judicial review.

14 “(3) The rule may include any other requirement to
15 ensure that the regional transmission siting agency’s orga-
16 nization, practices, and procedures are sufficient to carry
17 out this section and the rules promulgated under it.

18 “(d) TERMINATION.—The Commission, after notice
19 and opportunity for comment, may terminate the approval
20 of a compact under this section at any time if it deter-
21 mines that the regional transmission siting agency fails
22 to comply with the provisions of this section or Commis-
23 sion rules under subsection (c) or that the compact is con-
24 trary to the public interest.”.

1 **SEC. 105. EXPANSION OF INTERSTATE TRANSMISSION FA-**
2 **CILITIES.**

3 Part II of the Federal Power Act (16 U.S.C. 824 and
4 following) is amended by adding at the end the following
5 section:

6 **“SEC. 216. EXPANSION OF INTERSTATE TRANSMISSION FA-**
7 **CILITIES.**

8 “(a) COMMISSION AUTHORITY.—Upon the applica-
9 tion of an electric utility or transmitting utility, if the
10 Commission determines, after notice and opportunity for
11 hearing, that such action is in the public interest, it may
12 issue an order requiring a transmitting utility to enlarge,
13 extend, or improve its facilities for the transmission of
14 electric energy in interstate commerce. The transmitting
15 utility ordered to enlarge, extend, or improve its facilities
16 may apply to the Commission for an order terminating
17 or modifying the order if the transmitting utility dem-
18 onstrates, and the Commission determines, that the trans-
19 mitting utility has failed, after making a good faith effort,
20 to obtain the necessary approvals or property rights under
21 applicable Federal, State, and local laws.

22 “(b) COMPLIANCE WITH OTHER LAWS.—Commis-
23 sion action under this section shall be subject to the Na-
24 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
25 and following) and all other applicable State and Federal
26 laws. This section does not affect the authority of States

1 or political subdivisions of States to site transmission fa-
2 cilities under applicable State and local laws.

3 “(c) USE OF JOINT BOARDS.—Before issuing an
4 order under subsection (a), the Commission shall refer the
5 matter to a joint board for advice and recommendations
6 on the need for, design of, and location of the proposed
7 enlargement, extension, or improvement. The Commission
8 shall consider the advice and recommendations of such
9 board before ordering any such enlargement, extension, or
10 improvement. Any such board shall be composed of a
11 member or members, as determined by the Commission,
12 from the State or each of the States affected or to be af-
13 fected by such matter, from each Federal agency affected
14 or to be affected by such matter, and from the Commis-
15 sion. Any such board shall be vested with the same power
16 and be subject to the same duties and liabilities as in the
17 case of a member of the Commission when designated to
18 hold any hearings. The action of such board shall have
19 such force and effect and its proceedings shall be con-
20 ducted in such manner as the Commission shall by regula-
21 tions provide. The State member or members of such
22 board shall be appointed by the Commission from persons
23 nominated by the State commission of each State affected,
24 or by the Governor of such State if there is no State com-
25 mission. Each State affected shall be entitled to the same

1 number of representatives on the board unless the nomi-
2 nating power of such State waives such right. The Com-
3 mission shall have the discretion to reject the nominee
4 from any State, but shall thereupon invite a new nomina-
5 tion from that State. The Federal member or members
6 from agencies other than the Commission shall be ap-
7 pointed by the Commission in consultation with the head
8 of such agency or agencies. The Commission member or
9 members of such board shall be appointed by the chair-
10 man, in consultation with the Commission. The Commis-
11 sion may, when in its discretion sufficient reason exists
12 therefor, terminate such a board.

13 “(d) LIMITATION ON AUTHORITY.—The Commission
14 shall have no authority to compel a transmitting utility
15 to extend or improve its transmission facilities if such en-
16 largement, extension, or improvement would unreasonably
17 impair the ability of the transmitting utility to provide
18 adequate service to its customers.”.

19 **SEC. 106. CONFORMING AMENDMENTS.**

20 (a) ENFORCEMENT.—Subsections (a) and (b) of sec-
21 tion 316A of the Federal Power Act (16 U.S.C. 791a) are
22 each amended by striking “section 211, 212, 213, or
23 214,” in each place such phrase appears and inserting
24 “part II”.

1 (b) COMPLAINTS.—Section 306 of the Federal Power
2 Act is amended by inserting “agency or instrumentality
3 of the United States,” after “person,” in the first sentence
4 and by inserting “, electric utility, transmitting utility”
5 after “licensee” in each place it appears.

6 (c) REVIEW OF COMMISSION ORDERS.—Section 313
7 of the Federal Power Act is amended by inserting “agency
8 or instrumentality of the United States,” after “person,”
9 in the first sentence in subsection (a).

10 (d) TECHNICAL CORRECTIONS.—(1) Section 211(c)
11 of the Federal Power Act is amended by striking “(2)”
12 and by redesignating subparagraphs (A) and (B) as para-
13 graphs (1) and (2) and by striking “termination of modi-
14 fication” and inserting “termination or modification”.

15 (2) Section 315 of the Federal Power Act is amended
16 by striking “subsection” and inserting “section”.

17 **TITLE II—ELECTRIC** 18 **RELIABILITY**

19 **SEC. 201. ELECTRIC RELIABILITY.**

20 Part II of the Federal Power Act (16 U.S.C. 824 and
21 following) is amended by adding at the end the following
22 section:

23 **“SEC. 217. ELECTRIC RELIABILITY ORGANIZATION AND** 24 **OVERSIGHT.**

25 “(a) DEFINITIONS.—As used in this section:

1 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-
2 TY.—The term ‘affiliated regional reliability entity’
3 means an entity delegated authority under the provi-
4 sions of subsection (h).

5 “(2) BULK-POWER SYSTEM.—The term ‘bulk-
6 power system’ means all facilities and control sys-
7 tems necessary for operating an interconnected
8 transmission grid (or any portion thereof), including
9 high-voltage transmission lines, substations, control
10 centers, communications, data, and operations plan-
11 ning facilities, and the output of generating units
12 necessary to maintain transmission system reli-
13 ability.

14 “(3) ELECTRIC RELIABILITY ORGANIZATION.—
15 The term ‘electric reliability organization’ means the
16 organization approved by the Commission under
17 subsection (d)(4).

18 “(4) ENTITY RULE.—The term ‘entity rule’
19 means a rule adopted by an affiliated regional reli-
20 ability entity for a specific region and designed to
21 implement or enforce one or more organization
22 standards. An entity rule shall be subject to ap-
23 proval by the electric reliability organization and
24 once approved, shall be treated as an organization
25 standard.

1 “(5) INDUSTRY SECTOR.—The term ‘industry
2 sector’ means a group of users of the bulk-power
3 system with substantially similar commercial inter-
4 ests, as determined by the board of the electric reli-
5 ability organization.

6 “(6) INTERCONNECTION.—The term ‘inter-
7 connection’ means a geographic area in which the
8 operation of bulk-power system components is syn-
9 chronized such that the failure of one or more of
10 such components may adversely affect the ability of
11 the operators of other components within the inter-
12 connection to maintain safe and reliable operation of
13 the facilities within their control.

14 “(7) ORGANIZATION STANDARD.—The term ‘or-
15 ganization standard’ means a policy or standard
16 duly adopted by the electric reliability organization
17 to provide for the reliable operation of a bulk-power
18 system.

19 “(8) PUBLIC INTEREST GROUP.—The term
20 ‘public interest group’ means any nonprofit private
21 or public organization that has an interest in the ac-
22 tivities of the electric reliability organization, includ-
23 ing, but not limited to, ratepayer advocates, environ-
24 mental groups, and State and local government or-

1 organizations that regulate market participants and
2 promulgate government policy.

3 “(9) SYSTEM OPERATOR.—The term ‘system
4 operator’ means any entity that operates or is re-
5 sponsible for the operation of a bulk-power system,
6 including a control area operator, an independent
7 system operator, a transmission company, a trans-
8 mission system operator, or a regional security coor-
9 dinator.

10 “(10) USER OF THE BULK-POWER SYSTEM.—
11 The term ‘user of the bulk-power system’ means any
12 entity that sells, purchases, or transmits electric en-
13 ergy over a bulk-power system, or that owns, oper-
14 ates or maintains facilities or control systems that
15 are part of a bulk-power system, or that is a system
16 operator.

17 “(11) VARIANCE.—The term ‘variance’ means
18 an exception or variance from the requirements of
19 an organization standard (including a proposal for
20 an organization standard where there is no organiza-
21 tion standard) that is adopted by an affiliated re-
22 gional reliability entity and applicable to all or a
23 part of the region for which the affiliated regional
24 reliability entity is responsible. A variance shall be
25 subject to approval by the electric reliability organi-

1 zation and once approved, shall be treated as an or-
2 ganization standard.

3 “(b) COMMISSION AUTHORITY.—(1) Notwithstanding
4 section 201(f), the Commission shall have jurisdiction
5 within the United States over the electric reliability orga-
6 nization, all affiliated regional reliability entities, all sys-
7 tem operators, and all users of the bulk-power system, for
8 purposes of approving and enforcing compliance with the
9 requirements of this section.

10 “(2) The Commission may, by rule, define any other
11 term used in this section, provided such definition is con-
12 sistent with the definitions in, and the purpose and intent
13 of, this Act.

14 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
15 lowing enactment of this section, and prior to the approval
16 of the electric reliability organization under subsection (d),
17 any person, including the North American Electric Reli-
18 ability Council and its member regional reliability councils,
19 shall file with the Commission any reliability standard,
20 guidance or practice, or any amendment thereto, that the
21 person would propose to be made mandatory and enforce-
22 able. The Commission, after allowing interested persons
23 an opportunity to submit comments, may approve any
24 such proposed mandatory standard, guidance or practice,
25 or any amendment thereto, if it finds that the standard,

1 guidance, or practice, or amendment is just, reasonable,
2 not unduly discriminatory or preferential, and in the pub-
3 lic interest. Filed standards, guidances, or practices, in-
4 cluding any amendments thereto, shall be mandatory and
5 applicable according to their terms following approval by
6 the Commission and shall remain in effect until—

7 (1) withdrawn, disapproved or superseded by an
8 organization standard, issued or approved by the
9 electric reliability organization and made effective by
10 the Commission under subsection (e); or

11 (2) disapproved or suspended by the Commis-
12 sion if, upon complaint or upon its own motion and
13 after notice and opportunity for comment, the Com-
14 mission finds the standard, guidance or practice un-
15 just, unreasonable, unduly discriminatory or pref-
16 erential, or not in the public interest.

17 Standards, guidances or practices in effect pursuant to the
18 provisions of this subsection shall be enforceable by the
19 Commission.

20 “(d) ORGANIZATION APPROVAL.—(1) Not later than
21 90 days after the date of enactment of this section, the
22 Commission shall issue proposed rules specifying proce-
23 dures and requirements for an entity to apply for approval
24 as the electric reliability organization. The Commission
25 shall provide notice and opportunity for comment on the

1 proposed rules. The Commission shall promulgate a final
2 rule under this subsection within 180 days after the date
3 of enactment of this section.

4 “(2) Following the issuance of a final Commission
5 rule under paragraph (1), an entity may submit an appli-
6 cation to the Commission for approval as the electric reli-
7 ability organization. The applicant shall specify in its ap-
8 plication its governance and procedures, as well as its
9 funding mechanism and initial funding requirements.

10 “(3) The Commission shall provide public notice of
11 the application and afford interested parties an oppor-
12 tunity to comment.

13 “(4) The Commission shall approve the application
14 if the Commission determines that the applicant—

15 “(A) has the ability to develop, implement and
16 enforce standards that provide for an adequate level
17 of reliability of the bulk-power system;

18 “(B) permits voluntary membership to any user
19 of the bulk-power system or public interest group;

20 “(C) assures fair representation of its members
21 in the selection of its directors and fair management
22 of its affairs, taking into account the need for effi-
23 ciency and effectiveness in decisionmaking and oper-
24 ations and the requirements for technical com-
25 petency in the development of organization stand-

1 ards and the exercise of oversight of bulk-power sys-
2 tem reliability;

3 “(D) assures that no two industry sectors have
4 the ability to control, and no one industry sector has
5 the ability to veto, the electric reliability organiza-
6 tion’s discharge of its responsibilities (including ac-
7 tions by committees recommending standards to the
8 board or other board actions to implement and en-
9 force standards);

10 “(E) provides for governance by a board wholly
11 comprised of independent directors;

12 “(F) provides a funding mechanism and re-
13 quirements that are just, reasonable and not unduly
14 discriminatory or preferential and are in the public
15 interest, and which satisfy the requirements of sub-
16 section (I);

17 “(G) establishes procedures for development of
18 organization standards that provide reasonable no-
19 tice and opportunity for public comment, taking into
20 account the need for efficiency and effectiveness in
21 decisionmaking and operations and the requirements
22 for technical competency in the development of orga-
23 nization standards, and which standards develop-
24 ment process has the following attributes:

25 “(i) openness,

1 “(ii) balance of interests, and

2 “(iii) due process, except that the proce-
3 dures may include alternative procedures for
4 emergencies;

5 “(H) establishes fair and impartial procedures
6 for implementation and enforcement of organization
7 standards, either directly or through delegation to
8 an affiliated regional reliability entity, including the
9 imposition of penalties, limitations on activities,
10 functions, or operations, or other appropriate sanc-
11 tions;

12 “(I) establishes procedures for notice and op-
13 portunity for public observation of all meetings, ex-
14 cept that the procedures for public observation may
15 include alternative procedures for emergencies or for
16 the discussion of information the directors reason-
17 ably determine should take place in closed session,
18 such as litigation, personnel actions, or commercially
19 sensitive information;

20 “(J) provides for the consideration of rec-
21 ommendations of States and State commissions; and

22 “(K) addresses other matters that the Commis-
23 sion may deem necessary or appropriate to ensure
24 that the procedures, governance, and funding of the
25 electric reliability organization are just, reasonable,

1 not unduly discriminatory or preferential, and are in
2 the public interest.

3 “(5) The Commission shall approve only one electric
4 reliability organization. If the Commission receives two or
5 more timely applications that satisfy the requirements of
6 this subsection, the Commission shall approve only the ap-
7 plication it concludes will best implement the provisions
8 of this section.

9 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
10 ORGANIZATION STANDARDS.—(1) The electric reliability
11 organization shall file with the Commission any new or
12 modified organization standards, including any variances
13 or entity rules, and the Commission shall follow the proce-
14 dures under paragraph (2) for review of that filing.

15 “(2) Submissions under paragraph (1) shall include:

16 “(A) a concise statement of the purpose of the
17 proposal, and

18 “(B) a record of any proceedings conducted
19 with respect to such proposal.

20 The Commission shall provide notice of the filing of such
21 proposal and afford interested persons 30 days to submit
22 comments. The Commission, after taking into consider-
23 ation any submitted comments, shall approve or dis-
24 approve such proposal not later than 60 days after the
25 deadline for the submission of comments, except that the

1 Commission may extend the 60-day period for an addi-
2 tional 90 days for good cause, and except further that if
3 the Commission does not act to approve or disapprove a
4 proposal within the foregoing periods the proposal shall
5 go into effect subject to its terms, without prejudice to
6 the authority of the Commission thereafter to suspend or
7 modify the proposal in accordance with the standards and
8 requirements of this section. Proposals approved by the
9 Commission shall take effect according to their terms but
10 not earlier than 30 days after the effective date of the
11 Commission's order, except as provided in paragraph (3)
12 of this subsection.

13 “(3)(A) In the exercise of its review responsibilities
14 under this subsection, the Commission shall give due
15 weight to the technical expertise of the electric reliability
16 organization with respect to the content of a new or modi-
17 fied organization standard, but shall not defer to the orga-
18 nization with respect to the effect of the organization
19 standard on competition. The Commission shall approve
20 a proposed new or modified organization standard if it de-
21 termines the standard to be just, reasonable, not unduly
22 discriminatory or preferential, and in the public interest.
23 The Commission, either upon complaint or upon its own
24 motion, shall suspend an organization standard, if it de-
25 termines the standard to be unjust, unreasonable, unduly

1 discriminatory or preferential or not in the public interest.
2 Upon suspension of such a standard, the Commission shall
3 establish an interim standard to apply until a new or
4 modified standard is approved.

5 “(B) An existing or proposed organization standard
6 which is disapproved or suspended in whole or in part by
7 the Commission shall be remanded to the electric reli-
8 ability organization for further consideration.

9 “(C) The Commission, on its own motion or upon
10 complaint, may direct the electric reliability organization
11 to develop an organization standard, including modifica-
12 tion to an existing organization standard, addressing a
13 specific matter by a date certain if the Commission con-
14 siderers such new or modified organization standard nec-
15 essary or appropriate to further the purposes of this sec-
16 tion. The electric reliability organization shall file any such
17 new or modified organization standard in accordance with
18 this subsection.

19 “(D) An affiliated regional reliability entity may pro-
20 pose a variance or entity rule under subsection (h)(3) to
21 the electric reliability organization. The affiliated regional
22 reliability entity may request that the electric reliability
23 organization expedite consideration of the proposal, and
24 shall file a notice of such request with the Commission,
25 if expedited consideration is necessary to provide for bulk-

1 power system reliability. If the electric reliability organiza-
2 tion fails to adopt the variance or entity rule, either in
3 whole or in part, the affiliated regional reliability entity
4 may request that the Commission review such action. If
5 the Commission determines, after its review of such a re-
6 quest, that the action of the electric reliability organiza-
7 tion did not conform to the applicable standards and pro-
8 cedures approved by the Commission, or if the Commis-
9 sion determines that the variance or entity rule is just,
10 reasonable, not unduly discriminatory or preferential, and
11 in the public interest, and that the electric reliability orga-
12 nization has unreasonably rejected the proposed variance
13 or entity rule, then the Commission may remand the pro-
14 posed variance or entity rule for further consideration by
15 the electric reliability organization or may direct the elec-
16 tric reliability organization or the affiliated regional reli-
17 ability entity to develop a variance or entity rule consistent
18 with that requested by the affiliated regional reliability en-
19 tity. Any such variance or entity rule proposed by an affili-
20 ated regional reliability entity shall be submitted to the
21 electric reliability organization for review and filing with
22 the Commission in accordance with the procedures speci-
23 fied in this subsection.

24 “(E) Notwithstanding any other provision of this sub-
25 section, a proposed organization standard or amendment

1 shall take effect according to its terms if the electric reli-
2 ability organization determines that an emergency exists
3 requiring that such proposed organization standard or
4 amendment take effect without notice or comment. The
5 electric reliability organization shall notify the Commission
6 immediately following such determination and shall file
7 such emergency organization standard or amendment with
8 the Commission not later than five days following such
9 determination and shall include in such filing an expla-
10 nation of the need for such emergency standard. Subse-
11 quently, the Commission shall provide notice of the organi-
12 zation standard or amendment for comment, and shall fol-
13 low the procedures set out in paragraphs (2) and (3) for
14 review of the new or modified organization standard. Any
15 such emergency organization standard that has gone into
16 effect shall remain in effect unless and until suspended
17 or disapproved by the Commission. If the Commission de-
18 termines at any time that the emergency organization
19 standard or amendment is not necessary, the Commission
20 may suspend such emergency organization standard or
21 amendment.

22 “(4) All users of the bulk-power system shall comply
23 with any organization standard that takes effect under
24 this section.

1 “(f) COORDINATION WITH CANADA AND MEXICO.—
2 The electric reliability organization shall take all appro-
3 priate steps to gain recognition in Canada and Mexico.
4 The United States shall use its best efforts to enter into
5 international agreements with the appropriate govern-
6 ments of Canada and Mexico to provide for effective com-
7 pliance with organization standards and to provide for the
8 effectiveness of the electric reliability organization in car-
9 rying out its mission and responsibilities. All actions taken
10 by the electric reliability organization, any affiliated re-
11 gional reliability entity, and the Commission shall be con-
12 sistent with the provisions of such international agree-
13 ments.

14 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
15 FUNDING.—(1) The electric reliability organization shall
16 file with the Commission any proposed change in its proce-
17 dures, governance, or funding, or any changes in the affili-
18 ated regional reliability entity’s procedures, governance or
19 funding relating to delegated functions, and shall include
20 with the filing an explanation of the basis and purpose
21 for the change.

22 “(2) A proposed procedural change shall take effect
23 90 days after filing with the Commission if the change
24 constitutes a statement of policy, practice, or interpreta-
25 tion with respect to the meaning or enforcement of an ex-

1 isting procedure. Any other proposed procedural change
2 shall take effect only upon a finding by the Commission,
3 after notice and opportunity for comments, that the
4 change is just, reasonable, not unduly discriminatory or
5 preferential, is in the public interest, and satisfies the re-
6 quirements of subsection (d)(4).

7 “(3) A proposed change in governance or funding
8 shall not take effect unless the Commission finds that the
9 change is just, reasonable, not unduly discriminatory or
10 preferential, and is in the public interest, and satisfies the
11 requirements of subsection (d)(4).

12 “(4)(A) The Commission, either upon complaint or
13 upon its own motion, may suspend a procedure or govern-
14 ance or funding provision if it determines the procedure
15 or provision does not meet the requirements of subsection
16 (d)(4) or is unjust, unreasonable, unduly discriminatory
17 or preferential, or otherwise not in the public interest.
18 Upon such suspension the Commission shall establish an
19 interim procedure or governance or funding provision until
20 a new or modified procedure or governance or funding pro-
21 vision meeting the requirements of this subsection takes
22 effect.

23 “(B) The Commission, upon complaint or upon its
24 own motion, may require the electric reliability organiza-
25 tion to amend the procedures, governance or funding if

1 the Commission determines that the amendment is nec-
2 essary to meet the requirements of this section. The elec-
3 tric reliability organization shall file the amendment in ac-
4 cordance with paragraph (1) of this subsection.

5 “(h) DELEGATIONS OF AUTHORITY.—(1) The elec-
6 tric reliability organization shall, upon request by an enti-
7 ty, enter into an agreement with such entity for the dele-
8 gation of authority to implement and enforce compliance
9 with organization standards in a specified geographic area
10 if the electric reliability organization finds that the entity
11 requesting the delegation satisfies the requirements of
12 subsection (d)(4) (A), (B), (C), (D), (F), and (K), and
13 if the delegation promotes the effective and efficient imple-
14 mentation and administration of bulk-power system reli-
15 ability. The electric reliability organization may enter into
16 an agreement to delegate to the entity any other authority,
17 except that the electric reliability organization shall re-
18 serve the right to set and approve organization standards
19 for bulk-power system reliability. For purposes of this sub-
20 section, the New York State Reliability Council shall be
21 deemed to satisfy the requirements of this paragraph.

22 “(2) The electric reliability organization shall file
23 with the Commission any agreement entered into under
24 this subsection and any information the Commission re-
25 quires with respect to the affiliated regional reliability en-

1 tity to which authority is to be delegated. The Commission
2 shall approve the agreement, following public notice and
3 opportunity for comment, if it finds that the agreement
4 meets the requirements of paragraph (1), and is just, rea-
5 sonable, not unduly discriminatory or preferential, and is
6 in the public interest. A proposed delegation agreement
7 with an affiliated regional reliability entity organized on
8 an interconnection-wide basis shall be rebuttably pre-
9 sumed by the Commission to promote the effective and
10 efficient implementation and administration of bulk-power
11 system reliability. No delegation by the electric reliability
12 organization shall be valid unless approved by the Com-
13 mission.

14 “(3)(A) A delegation agreement entered into under
15 this subsection shall specify the procedures for an affili-
16 ated regional reliability entity to propose entity rules or
17 variances for review by the electric reliability organization.
18 With respect to any such proposal that would apply on
19 an interconnection-wide basis, the electric reliability orga-
20 nization shall presume such proposal valid if made by an
21 interconnection-wide affiliated regional reliability entity
22 unless the electric reliability organization makes a written
23 finding that the proposal—

1 “(i) was not developed in a fair and open proc-
2 ess that provided an opportunity for all interested
3 parties to participate;

4 “(ii) has a significant adverse impact on reli-
5 ability or interstate commerce in other interconnec-
6 tions;

7 “(iii) fails to provide a level of bulk-power sys-
8 tem reliability within the interconnection such that
9 it would constitute a serious and substantial threat
10 to public health, safety, welfare, or national security;
11 or

12 “(iv) creates a serious and substantial burden
13 on competitive markets within the interconnection
14 that is not necessary for reliability.

15 “(B) With respect to any such proposal that would
16 apply only to part of an interconnection, the electric reli-
17 ability organization shall find such proposal valid if the
18 affiliated regional reliability entity or entities making the
19 proposal demonstrate that it—

20 “(i) was developed in a fair and open process
21 that provided an opportunity for all interested par-
22 ties to participate;

23 “(ii) would not have an adverse impact on
24 interstate commerce that is not necessary for reli-
25 ability;

1 “(iii) provides a level of bulk-power system reli-
2 ability adequate to protect public health, safety, wel-
3 fare, and national security, and would not have a
4 significant adverse impact on reliability; and

5 “(iv) in the case of a variance, is based on le-
6 gitimate differences between regions or between sub-
7 regions within the affiliated regional reliability enti-
8 ty’s geographic area.

9 The electric reliability organization shall approve or dis-
10 approve such proposal within 120 days, or the proposal
11 shall be deemed approved. Following approval of any such
12 proposal under this paragraph, the electric reliability orga-
13 nization shall seek Commission approval pursuant to sub-
14 section (e)(3). Affiliated regional reliability entities may
15 not make requests for approval directly to the Commission
16 except pursuant to subsection (e)(3)(D).

17 “(4) If an affiliated regional reliability entity re-
18 quests, consistent with paragraph (1), that the electric re-
19 liability organization delegate authority to it, but is unable
20 within 180 days to reach agreement with the electric reli-
21 ability organization with respect to such requested delega-
22 tion, such entity may seek relief from the Commission. If,
23 following notice and opportunity for comment, the Com-
24 mission determines that a delegation to the entity would
25 meet the requirements of subsection (1) above, and that

1 the delegation would be just, reasonable, not unduly dis-
2 criminatory or preferential, and in the public interest, and
3 that the electric reliability organization has unreasonably
4 withheld such delegation, the Commission may, by order,
5 direct the electric reliability organization to make such del-
6 egation.

7 “(5)(A) The Commission may, upon its own motion
8 or upon complaint, and with notice to the appropriate af-
9 filiated regional reliability entity or entities, direct the
10 electric reliability organization to propose a modification
11 to an agreement entered into under this subsection if the
12 Commission determines that—

13 “(i) the affiliated regional reliability entity no
14 longer has the capacity to carry out effectively or ef-
15 ficiently its implementation or enforcement respon-
16 sibilities under that agreement, has failed to meet its
17 obligations under that agreement, or has violated
18 any provision of this section,

19 “(ii) the rules, practices, or procedures of the
20 affiliated regional reliability entity no longer provide
21 for fair and impartial discharge of its implementa-
22 tion or enforcement responsibilities under the agree-
23 ment,

24 “(iii) the geographic boundary of a regional
25 transmission organization approved by the Commis-

1 sion is not wholly within the boundary of an affili-
2 ated regional reliability entity and such difference is
3 inconsistent with the effective and efficient imple-
4 mentation and administration of bulk-power system
5 reliability, or

6 “(iv) the agreement is inconsistent with another
7 delegation agreement as a result of actions taken
8 under paragraph (4) of this subsection.

9 “(B) Following an order of the Commission issued
10 under subparagraph (A), the Commission may suspend
11 the affected agreement if the electric reliability organiza-
12 tion or the affiliated regional reliability entity does not
13 propose an appropriate and timely modification. If the
14 agreement is suspended, the electric reliability organiza-
15 tion shall assume the previously delegated responsibilities.
16 The Commission shall allow the electric reliability organi-
17 zation and the affiliated regional reliability entity an op-
18 portunity to appeal the suspension. Any such appeal shall
19 not stay the suspension unless directed by the Commission
20 or a reviewing court.

21 “(i) ORGANIZATION MEMBERSHIP.—Every system
22 operator shall be required to be a member of the electric
23 reliability organization and shall be required also to be a
24 member of any affiliated regional reliability entity oper-
25 ating under an agreement effective pursuant to subsection

1 (h) applicable to the region in which the system operator
2 operates or is responsible for operation of bulk-power sys-
3 tem facilities.

4 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
5 Consistent with the range of actions approved by the Com-
6 mission under subsection (d)(4)(H), the electric reliability
7 organization may impose a penalty, limit activities, func-
8 tions, or operations, or take such other disciplinary actions
9 the electric reliability organization finds appropriate
10 against a user of the bulk-power system if the electric reli-
11 ability organization, after notice and opportunity for inter-
12 ested parties to be heard, issues a finding in writing that
13 the user of the bulk-power system has violated an organi-
14 zation standard approved by the Commission. The electric
15 reliability organization shall immediately notify the Com-
16 mission of any disciplinary action imposed with respect to
17 an act or failure to act of a user of the bulk-power system
18 that affected or threatened to affect bulk-power system fa-
19 cilities located in the United States. The sanctioned party
20 shall have the right to seek suspension, modification, or
21 rescission of such disciplinary action by the Commission.
22 If the electric reliability organization finds it necessary to
23 prevent a serious threat to reliability, the organization
24 may seek injunctive relief in the United States district

1 court for the district in which the affected facilities are
2 located.

3 “(2) A disciplinary action taken under paragraph (1)
4 may take effect no earlier than 30 days after the electric
5 reliability organization files with the Commission its writ-
6 ten finding and record of proceedings before the electric
7 reliability organization and the Commission posts the or-
8 ganization’s written finding, unless the Commission, on its
9 own motion or upon petition by the user of the bulk-power
10 system which is the subject of the action, suspends the
11 action. The action shall remain in effect or remain sus-
12 pended until the Commission, after notice and opportunity
13 for hearing, affirms, sets aside, modifies, or reinstates the
14 action, but the Commission shall conduct such hearing
15 under procedures established to ensure expedited consider-
16 ation of the action taken.

17 “(3) The Commission, on its own motion or upon
18 complaint of any person, may order compliance with an
19 organization standard and may impose a penalty, limit ac-
20 tivities, functions, or operations, or take such other dis-
21 ciplinary action as the Commission finds appropriate,
22 against a user of the bulk-power system with respect to
23 actions affecting or threatening to affect bulk-power sys-
24 tem facilities located in the United States if the Commis-
25 sion finds, after notice and opportunity for a hearing, that

1 the user of the bulk-power system has violated or threat-
2 ens to violate an organization standard.

3 “(4) The Commission may take such action as is nec-
4 essary against the electric reliability organization or an af-
5 filiated regional reliability entity to assure compliance with
6 an organization standard, or any Commission order affect-
7 ing the electric reliability organization or an affiliated re-
8 gional reliability entity.

9 “(k) RELIABILITY REPORTS.—The electric reliability
10 organization shall conduct periodic assessments of the reli-
11 ability and adequacy of the interconnected bulk-power sys-
12 tem in North America and shall report annually to the
13 Secretary of Energy and the Commission its findings and
14 recommendations for monitoring or improving system reli-
15 ability and adequacy.

16 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
17 COSTS.—The reasonable costs of the electric reliability or-
18 ganization, and the reasonable costs of each affiliated re-
19 gional reliability entity that are related to implementation
20 and enforcement of organization standards or other re-
21 quirements contained in a delegation agreement approved
22 under subsection (h), shall be assessed by the electric reli-
23 ability organization and each affiliated regional reliability
24 entity, respectively, taking into account the relationship of
25 costs to each region and based on an allocation that re-

1 fleets an equitable sharing of the costs among all end-
2 users. The Commission shall provide by rule for the review
3 of such costs and allocations, pursuant to the standards
4 in this subsection and subsection (d)(4)(F).

5 “(m) APPLICATION OF ANTITRUST LAWS.—

6 “(1) IN GENERAL.—To the extent undertaken
7 to develop, or implement, or enforce an organization
8 standard, each of the following activities shall not, in
9 any action under the antitrust laws, be deemed ille-
10 gal per se:

11 “(A) Activities undertaken by the electric
12 reliability organization under this section or af-
13 filiated regional reliability entity operating
14 under an agreement in effect under subsection
15 (h).

16 “(B) Activities of a member of the electric
17 reliability organization or affiliated regional re-
18 liability entity in pursuit of organization objec-
19 tives under this section undertaken in good
20 faith under the rules of the organization.

21 Primary jurisdiction, and immunities and other af-
22 firmative defenses, shall be available to the extent
23 otherwise applicable.

24 “(2) RULE OF REASON.—In any action under
25 the antitrust laws, an activity described in para-

1 graph (1) shall be judged on the basis of its reason-
2 ableness, taking into account all relevant factors af-
3 fecting competition and reliability.

4 “(3) DEFINITION.—For purposes of this sub-
5 section, the term ‘antitrust laws’ has the meaning
6 given such term in subsection (a) of the first section
7 of the Clayton Act (15 U.S.C. 12(a)), except that
8 such term includes section 5 of the Federal Trade
9 Commission Act (15 U.S.C. 45) to the extent that
10 such section 5 applies to unfair methods of competi-
11 tion.

12 “(n) SAVINGS CLAUSE.—Nothing in this section shall
13 be construed to preempt the authority of a State or a po-
14 litical subdivision of a State to ensure the reliability of
15 local distribution facilities within the State except where
16 the exercise of such authority unreasonably impairs the
17 reliability of the bulk-power system.

18 “(o) REGIONAL ADVISORY BODIES.—The Commis-
19 sion shall establish a regional advisory body on the petition
20 of two-thirds of the Governors of a region. A regional advi-
21 sory body shall be composed of one member from each
22 participating State in the region, appointed by the Gov-
23 ernor of each State, and may include representatives of
24 agencies, States, and provinces outside the United States,
25 upon execution of an international agreement or agree-

1 ments described in subsection (f). A regional advisory body
2 may provide recommendations to the electric reliability or-
3 ganization, an affiliated regional reliability entity, or the
4 Commission regarding the governance of an existing or
5 proposed affiliated regional reliability entity within the
6 same region, whether an organization standard, entity
7 rule, or variance proposed to apply within the region is
8 just, reasonable, not unduly discriminatory or preferential,
9 and in the public interest, and whether fees proposed to
10 be assessed within the region are just, reasonable, not un-
11 duly discriminatory or preferential, in the public interest,
12 and consistent with the requirements of subsection (l).
13 The Commission may give deference to the recommenda-
14 tions of any such regional advisory body if that body is
15 organized on an interconnection-wide basis.”.

16 **TITLE III—CONSUMER** 17 **PROTECTION**

18 **SEC. 301. ELECTRIC SUPPLIER INFORMATION DISCLOSURE.**

19 (a) DISCLOSURE RULES.—Not later than January 1,
20 2001, the Federal Trade Commission shall promulgate
21 rules prescribing the form, placement, content, and timing
22 of the disclosure required under subsections (b) and (c)
23 of this section. Such rules shall be promulgated in accord-
24 ance with section 553 of title 5 of the United States Code,
25 after consultation with the Federal Energy Regulatory

1 Commission, the Secretary of Energy, and the Adminis-
2 trator of the Environmental Protection Agency.

3 (b) DISCLOSURE TO RETAIL ELECTRIC CON-
4 SUMERS.—In order to assist retail electric consumers in
5 making informed purchasing decisions, any retail electric
6 supplier that sells or makes an offer to sell electric energy,
7 or solicits retail electric consumers to purchase electric en-
8 ergy, shall provide the retail electric consumers, in accord-
9 ance with rules promulgated under subsection (a), a state-
10 ment containing the following information:

11 (1)(A) The nature of the service being offered,
12 including information about interruptibility of serv-
13 ice.

14 (B) The price of electric energy, including a de-
15 scription of any variable charges.

16 (C) A description of all other charges that are
17 associated with the service being offered including,
18 but not limited to, access charges, exit charges,
19 back-up service charges, stranded cost recovery
20 charges, and customer service charges.

21 (D) Information concerning the product or
22 price that the Federal Trade Commission determines
23 is technologically and economically feasible to pro-
24 vide and is of assistance to retail electric consumers
25 in making purchasing decisions.

1 (2) Information concerning the share of electric
2 energy that is generated by each type of electric gen-
3 eration resource and generation emissions character-
4 istics that the Federal Trade Commission deter-
5 mines is technologically and economically feasible to
6 provide and is of assistance to retail electric con-
7 sumers in making purchasing decisions.

8 (c) DISCLOSURE TO WHOLESALE PURCHASERS.—In
9 every sale of electric energy for resale, the seller shall pro-
10 vide to the purchaser such information respecting genera-
11 tion source and emissions characteristics as may be re-
12 quired by rules under subsection (a).

13 (d) FEDERAL TRADE COMMISSION ENFORCE-
14 MENT.—Violation of a rule promulgated under this section
15 shall be treated as a violation of a rule under section 18
16 of the Federal Trade Commission Act (15 U.S.C. 57a).
17 All functions and powers of the Federal Trade Commis-
18 sion under such Act are available to the Federal Trade
19 Commission to enforce compliance with this section not-
20 withstanding any jurisdictional limitations in such Act.

21 (e) STATE AUTHORITY.—(1) This section does not
22 preclude a State or State commission from prescribing and
23 enforcing additional laws, regulations, or procedures re-
24 garding the practices which are the subject of this section,
25 so long as such laws, regulations, or procedures are not

1 inconsistent with the provisions of this section or with any
2 rule prescribed by the Federal Trade Commission pursu-
3 ant to it.

4 (2) The remedies provided by this section are in addi-
5 tion to any other remedies available by law.

6 **SEC. 302. CONSUMER PRIVACY.**

7 (a) PROHIBITION.—The Federal Trade Commission
8 shall promulgate rules prohibiting any person who obtains
9 consumer information in connection with the sale or deliv-
10 ery of electric energy to a retail electric consumer from
11 using, disclosing, or permitting access to such information
12 unless the consumer to whom such information relates
13 provides prior written approval. Such rules shall be pro-
14 mulgated in accordance with section 553 of title 5 of the
15 United States Code.

16 (b) PERMITTED USE.—The rules under subsection
17 (a) shall not prohibit any person from using, disclosing,
18 or permitting access to consumer information referred to
19 in subsection (a) for any of the following purposes:

20 (1) To initiate, render, bill, or collect for the
21 sale or delivery of electric energy to retail electric
22 consumers or for related services.

23 (2) To protect the rights or property of the per-
24 son obtaining such information.

1 (3) To protect retail electric consumers from
2 fraud, abuse, and unlawful subscription in the sale
3 or delivery of electric energy to such consumers.

4 (4) For law enforcement purposes.

5 (5) For purposes of compliance with any Fed-
6 eral, State, or local law or regulation authorizing
7 disclosure of information to a Federal, State, or
8 local agency.

9 (c) AGGREGATE CONSUMER INFORMATION.—The
10 rules under subsection (a) shall permit any person to use,
11 disclose, and permit access to aggregate consumer infor-
12 mation and shall require local distribution companies to
13 make such information available to retail electric suppliers
14 upon request and payment of a reasonable fee.

15 (d) FEDERAL TRADE COMMISSION ENFORCE-
16 MENT.—Violation of a rule promulgated under this section
17 shall be treated as a violation of a rule under section 18
18 of the Federal Trade Commission Act (15 U.S.C. 57a).
19 All functions and powers of the Federal Trade Commis-
20 sion under such Act are available to the Federal Trade
21 Commission to enforce compliance with this section not-
22 withstanding any jurisdictional limitations in such Act.

23 (e) STATE AUTHORITY.—(1) This section does not
24 preclude a State or State commission from prescribing and
25 enforcing additional laws, regulations, or procedures re-

1 garding the practices which are the subject of this section,
2 so long as such laws, regulations, or procedures are not
3 inconsistent with the provisions of this section or with any
4 rule prescribed by the Federal Trade Commission pursu-
5 ant to it.

6 (2) The remedies provided by this section are in addi-
7 tion to any other remedies available by law.

8 (f) DEFINITIONS.—As used in this section:

9 (1) AGGREGATE CONSUMER INFORMATION.—
10 The term “aggregate consumer information” means
11 collective data that relates to a group or category of
12 retail electric consumers, from which individual con-
13 sumer identities and characteristics have been re-
14 moved.

15 (2) CONSUMER INFORMATION.—The term “con-
16 sumer information” means information that relates
17 to the quantity, technical configuration, type, des-
18 tination, or amount of use of electric energy deliv-
19 ered to any retail electric consumer.

20 **SEC. 303. ELECTRIC SUPPLY UNFAIR TRADE PRACTICES.**

21 (a) SLAMMING.—(1) The Federal Trade Commission
22 shall promulgate rules in accordance with section 553 of
23 title 5 of the United States Code for the submittal and
24 verification of a retail electric consumer’s selection or

1 change in selection of a retail electric supplier and for the
2 assessment of penalties for violation of these rules.

3 (2) A person shall not submit or change the selection
4 made by a retail electric consumer except in accordance
5 with procedures established in paragraph (1).

6 (b) CRAMMING.—(1) The Federal Trade Commission
7 shall promulgate rules in accordance with section 553 of
8 title 5 of the United States Code for obtaining the consent
9 of a retail electric consumer for purchase of goods and
10 services other than those expressly authorized by law or
11 any agreement for the purchase of electric energy or re-
12 lated services entered into by the electric consumer and
13 for the assessment of penalties for violation of these rules.

14 (2) A person shall not charge a retail electric con-
15 sumer for a particular good or service except in accordance
16 with procedures established in paragraph (1).

17 (c) FEDERAL TRADE COMMISSION ENFORCEMENT.—
18 Violation of a rule promulgated under this section shall
19 be treated as a violation of a rule under section 18 of the
20 Federal Trade Commission Act (15 U.S.C. 57a). All func-
21 tions and powers of the Federal Trade Commission under
22 such Act are available to the Federal Trade Commission
23 to enforce compliance with this section notwithstanding
24 any jurisdictional limitations in such Act.

1 (d) STATE AUTHORITY.—(1) This section does not
2 preclude a State or State commission from prescribing and
3 enforcing additional laws, regulations, or procedures re-
4 garding the practices which are the subject of this section,
5 so long as such laws, regulations, or procedures are not
6 inconsistent with the provisions of this section or with any
7 rule prescribed by the Federal Trade Commission pursu-
8 ant to it.

9 (2) The remedies provided by this section are in addi-
10 tion to any other remedies available by law.

11 **SEC. 304. UNIVERSAL AND AFFORDABLE SERVICE.**

12 It is the sense of the Congress that—

13 (1) every retail electric consumer should have
14 access to electric energy at reasonable and afford-
15 able rates; and

16 (2) the States should ensure that retail electric
17 competition does not result in the loss of service to
18 rural, residential, or low-income consumers.

19 **SEC. 305. DEFINITIONS.**

20 For purposes of this title, each of the terms “local
21 distribution company”, “retail electric consumer”, “retail
22 electric supplier”, and “State commission” has the mean-
23 ing given such term in section 3 of the Federal Power Act.

1 **TITLE IV—MERGERS**
2 **SEC. 401. ELECTRIC COMPANY MERGERS AND DISPOSITION**
3 **OF PROPERTY.**

4 (a) IN GENERAL.—Section 203(a) of the Federal
5 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
6 lows:

7 “(a) No electric utility or transmitting utility shall
8 purchase or lease generation or transmission facilities of
9 a value in excess of \$50,000 (other than new facilities)
10 or by any means whatsoever, directly or indirectly, merge
11 or consolidate such facilities or any part thereof (other
12 than facilities financed by the Rural Utilities Service) with
13 those of any other person, or purchase, acquire, or take
14 any security of any other electric utility or transmitting
15 utility, without first having secured an order of the Com-
16 mission authorizing it to do so. Except as the Commission
17 otherwise provides, a holding company in a holding com-
18 pany system that includes an electric utility company shall
19 not, directly or indirectly, purchase, acquire, or take any
20 security of an electric utility company or of a holding com-
21 pany in a holding company system that includes an electric
22 utility company, without first securing an order of the
23 Commission authorizing it to do so. Upon application for
24 such approval the Commission shall give reasonable notice
25 in writing to the Governor and State commission of each

1 of the States in which the physical property is affected,
2 or any part thereof is situated, and to such other persons
3 as it may deem advisable. After notice and a 60-day oppor-
4 tunity for hearing, the Commission shall approve the pro-
5 posed action if it finds that such action will be consistent
6 with the public interest. The Commission shall approve or
7 disapprove such action within 90 days after such 60-day
8 period, except that the Commission may extend such 90-
9 day period for an additional 90 days for good cause. For
10 purposes of this subsection, the terms “electric utility
11 company”, “holding company”, and “holding company
12 system” have the meanings given those terms by section
13 511 of the Electricity Competition and Reliability Act.
14 Notwithstanding sections 201(b)(1) and 201(f), genera-
15 tion and transmission facilities shall be subject to the ju-
16 risdiction of the Commission for purposes of this section.

17 (b) DEFINITION OF ELECTRIC UTILITY.—Section
18 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is
19 amended by striking “, but does not include any” and in-
20 serting “and each”.

21 **SEC. 402. ELIMINATION OF REVIEW BY THE NUCLEAR REG-**
22 **ULATORY COMMISSION.**

23 Section 105 of the Atomic Energy Act of 1954 (42
24 U.S.C. 2135) is amended by adding the following after
25 subsection c.:

1 “d. Following the date of enactment of this sub-
2 section, subsection 105 c. shall not apply to any pending
3 or future application filed for a license to construct or op-
4 erate a utilization or production facility under sections
5 103 or 104 b. This subsection shall not affect the Commis-
6 sion’s authority to enforce conditions included in licenses
7 issued under section/“(C 103 or 104 b. before the date
8 of enactment of this subsection.”.

9 **SEC. 403. ANTITRUST SAVINGS CLAUSE.**

10 This Act and the amendments made by this Act shall
11 not be construed to affect the operation of the antitrust
12 laws. For purposes of this section, the term “antitrust
13 laws” has the meaning given such term in subsection (a)
14 of the first section of the Clayton Act (15 U.S.C. 12(a)),
15 except that such term includes section 5 of the Federal
16 Trade Commission Act (15 U.S.C. 45) to the extent that
17 such section 5 applies to unfair methods of competition.

18 **TITLE V—PROMOTING**

19 **COMPETITION**

20 **Subtitle A—Retail Reciprocity**

21 **SEC. 501. RETAIL RECIPROCITY.**

22 (a) IN GENERAL.—Part II of the Federal Power Act
23 (16 U.S.C. 824 and following) is amended by adding at
24 the end the following section:

1 **“SEC. 218. RETAIL RECIPROCITY.**

2 “(a) IN GENERAL.—A retail electric supplier shall
3 not sell electric energy to any retail electric consumer
4 through local distribution facilities owned, controlled, or
5 operated by another entity unless all local distribution fa-
6 cilities owned, controlled, or operated by the retail electric
7 supplier, or any affiliate thereof, are subject to open ac-
8 cess. The preceding sentence shall not apply to any retail
9 electric supplier specifically exempted, by State law en-
10 acted prior to the date of enactment of this section, from
11 State reciprocity requirements. In the case of local dis-
12 tribution facilities that are owned, controlled, or operated
13 by a State regulated electric utility and that are not sub-
14 ject to open access, for purposes of this subsection such
15 local distribution facilities shall be deemed to be subject
16 to open access if the State regulated electric utility has
17 filed with the State commission a plan to provide, within
18 two years after the date of such filing, open access to such
19 facilities.

20 “(b) FOREIGN COMMERCE.—A retail electric supplier
21 located in a foreign country which is a party to the North
22 American Free Trade Agreement shall not sell electric en-
23 ergy to retail electric consumers in the United States
24 through local distribution facilities owned, controlled, or
25 operated by a local distribution company in the United
26 States unless all local distribution facilities owned, con-

1 trolled, or operated by the retail electric supplier, or any
2 affiliate thereof, and located in such country are subject
3 to open access.

4 “(c) DEFINITION.—For purposes of this section, the
5 term ‘affiliate’ means any corporation 5 percent or more
6 of the outstanding voting securities of which are owned,
7 controlled, or held with power to vote, directly or indi-
8 rectly, by such corporation.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall take effect one year after the date of
11 the enactment of this Act.

12 **Subtitle B—Public Utility Holding**
13 **Company Act of 1935**

14 **SEC. 511. DEFINITIONS.**

15 For purposes of this subtitle:

16 (1) The term “affiliate” of a company means
17 any company 5 percent or more of the outstanding
18 voting securities of which are owned, controlled, or
19 held with power to vote, directly or indirectly, by
20 such company.

21 (2) The term “associate company” of a com-
22 pany means any company in the same holding com-
23 pany system with such company.

24 (3) The term “Commission” means the Federal
25 Energy Regulatory Commission.

1 (4) The term “company” means a corporation,
2 partnership, association, joint stock company, busi-
3 ness trust, or any organized group of persons,
4 whether incorporated or not, or a receiver, trustee,
5 or other liquidating agent of any of the foregoing.

6 (5) The term “electric utility company” means
7 any company that owns or operates facilities used
8 for the generation, transmission, or distribution of
9 electric energy for sale.

10 (6) The terms “exempt wholesale generator”
11 and “foreign utility company” have the same mean-
12 ings as in sections 32 and 33, respectively, of the
13 Public Utility Holding Company Act of 1935, as
14 those sections existed on the day before the effective
15 date of this subtitle.

16 (7) The term “gas utility company” means any
17 company that owns or operates facilities used for
18 distribution at retail (other than the distribution
19 only in enclosed portable containers or distribution
20 to tenants or employees of the company operating
21 such facilities for their own use and not for resale)
22 of natural or manufactured gas for heat, light, or
23 power.

24 (8) The term “holding company” means—

1 (A) any company that directly or indirectly
2 owns, controls, or holds, with power to vote, 10
3 percent or more of the outstanding voting secu-
4 rities of a public utility company or of a holding
5 company of any public utility company; and

6 (B) any person, determined by the Com-
7 mission, after notice and opportunity for hear-
8 ing, to exercise directly or indirectly (either
9 alone or pursuant to an arrangement or under-
10 standing with one or more persons) such a con-
11 trolling influence over the management or poli-
12 cies of any public utility company or holding
13 company as to make it necessary or appropriate
14 for the protection of utility customers with re-
15 spect to rates that such person be subject to the
16 obligations, duties, and liabilities imposed by
17 this subtitle upon holding companies.

18 (9) The term “holding company system” means
19 a holding company, together with its subsidiary com-
20 panies.

21 (10) The term “jurisdictional rates” means
22 rates established by the Commission for the trans-
23 mission of electric energy in interstate commerce,
24 the sale of electric energy at wholesale in interstate
25 commerce, the transportation of natural gas in inter-

1 state commerce, and the sale in interstate commerce
2 of natural gas for resale for ultimate public con-
3 sumption for domestic, commercial, industrial, or
4 any other use.

5 (11) The term “natural gas company” means a
6 person engaged in the transportation of natural gas
7 in interstate commerce or the sale of such gas in
8 interstate commerce for resale.

9 (12) The term “person” means an individual or
10 company.

11 (13) The term “public utility” means any per-
12 son who owns or operates facilities used for trans-
13 mission of electric energy in interstate commerce or
14 sales of electric energy at wholesale in interstate
15 commerce.

16 (14) The term “public utility company” means
17 an electric utility company or a gas utility company.

18 (15) The term “State commission” means any
19 commission, board, agency, or officer, by whatever
20 name designated, of a State, municipality, or other
21 political subdivision of a State that, under the laws
22 of such State, has jurisdiction to regulate public util-
23 ity companies.

24 (16) The term “subsidiary company” of a hold-
25 ing company means—

1 (A) any company, 10 percent or more of
2 the outstanding voting securities of which are
3 directly or indirectly owned, controlled, or held
4 with power to vote, by such holding company;
5 and

6 (B) any person, the management or poli-
7 cies of which the Commission, after notice and
8 opportunity for hearing, determines to be sub-
9 ject to a controlling influence, directly or indi-
10 rectly, by such holding company (either alone or
11 pursuant to an arrangement or understanding
12 with one or more other persons) so as to make
13 it necessary for the protection of utility cus-
14 tomers with respect to rates that such person
15 be subject to the obligations, duties, and liabil-
16 ities imposed by this subtitle upon subsidiary
17 companies of holding companies.

18 (17) The term “voting security” means any se-
19 curity presently entitling the owner or holder thereof
20 to vote in the direction or management of the affairs
21 of a company.

1 **SEC. 512. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
2 **PANY ACT OF 1935.**

3 The Public Utility Holding Company Act of 1935 (15
4 U.S.C. 79a and following) is repealed, effective 12 months
5 after the date of enactment of this Act.

6 **SEC. 513. FEDERAL ACCESS TO BOOKS AND RECORDS.**

7 (a) IN GENERAL.—Each holding company and each
8 associate company thereof shall maintain, and shall make
9 available to the Commission, such books, accounts, memo-
10 randa, and other records as the Commission determines
11 are necessary to identify costs incurred by a public utility
12 or natural gas company that is an associate company of
13 such holding company and necessary or appropriate for
14 the protection of utility customers with respect to jurisdic-
15 tional rates.

16 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
17 ing company or of any subsidiary company of a holding
18 company shall maintain, and make available to the Com-
19 mission, such books, accounts, memoranda, and other
20 records with respect to any transaction with another affil-
21 iate, as the Commission determines are necessary to iden-
22 tify costs incurred by a public utility or natural gas com-
23 pany that is an associate company of such holding com-
24 pany and necessary or appropriate for the protection of
25 utility customers with respect to jurisdictional rates.

1 (c) HOLDING COMPANY SYSTEMS.—The Commission
2 may examine the books, accounts, memoranda, and other
3 records of any company in a holding company system, or
4 any affiliate thereof, as the Commission determines are
5 necessary to identify costs incurred by a public utility or
6 natural gas company within such holding company system
7 and necessary or appropriate for the protection of utility
8 customers with respect to jurisdictional rates.

9 (d) CONFIDENTIALITY.—No member, officer, or em-
10 ployee of the Commission shall divulge any fact or infor-
11 mation that may come to his or her knowledge during the
12 course of examination of books, accounts, memoranda, or
13 other records as provided in this section, except as may
14 be directed by the Commission or by a court of competent
15 jurisdiction.

16 **SEC. 514. STATE ACCESS TO BOOKS AND RECORDS.**

17 (a) IN GENERAL.—Upon the written request of a
18 State commission having jurisdiction to regulate a public
19 utility company in a holding company system, and subject
20 to such terms and conditions as may be necessary and ap-
21 propriate to safeguard against unwarranted disclosure to
22 the public of any trade secrets or sensitive commercial in-
23 formation, a holding company or its associate company or
24 affiliate thereof, wherever located, shall produce for in-

1 spection books, accounts, memoranda, and other records
2 that—

3 (1) have been identified in reasonable detail in
4 a proceeding before the State commission;

5 (2) the State commission determines are nec-
6 essary to identify costs incurred by such public util-
7 ity company; and

8 (3) are necessary for the effective discharge of
9 the responsibilities of the State commission with re-
10 spect to such proceeding.

11 (b) EFFECT ON STATE LAW.—Nothing in this section
12 shall preempt applicable State law concerning the provi-
13 sion of books, accounts, memoranda, or other records, or
14 in any way limit the rights of any State to obtain books,
15 accounts, memoranda, or other records under Federal law,
16 contract, or otherwise.

17 (c) COURT JURISDICTION.—Any United States dis-
18 trict court located in the State in which the State commis-
19 sion referred to in subsection (a) is located shall have ju-
20 risdiction to enforce compliance with this section.

21 **SEC. 515. EXEMPTION AUTHORITY.**

22 (a) RULEMAKING.—Not later than 90 days after the
23 date of enactment of this Act, the Commission shall pro-
24 mulgate a final rule to exempt from the requirements of

1 section 513 any person that is a holding company, solely
2 with respect to one or more—

- 3 (1) qualifying facilities under the Public Utility
4 Regulatory Policies Act of 1978;
5 (2) exempt wholesale generators; or
6 (3) foreign utility companies.

7 (b) OTHER AUTHORITY.—If, upon application or
8 upon its own motion, the Commission finds that the books,
9 accounts, memoranda, and other records of any person are
10 not relevant to the jurisdictional rates of a public utility
11 company or natural gas company, or if the Commission
12 finds that any class of transactions is not relevant to the
13 jurisdictional rates of a public utility company, the Com-
14 mission shall exempt such person or transaction from the
15 requirements of section 513.

16 **SEC. 516. AFFILIATE TRANSACTIONS.**

17 Nothing in this subtitle shall preclude the Commis-
18 sion or a State commission from exercising its jurisdiction
19 under otherwise applicable law to determine whether a
20 public utility company, public utility, or natural gas com-
21 pany may recover in rates any costs of an activity per-
22 formed by an associate company, or any costs of goods
23 or services acquired by such public utility company, public
24 utility, or natural gas company from an associate com-
25 pany.

1 **SEC. 517. APPLICABILITY.**

2 No provision of this subtitle shall apply to, or be
3 deemed to include—

4 (1) the United States;

5 (2) a State or any political subdivision of a
6 State;

7 (3) any foreign governmental authority not op-
8 erating in the United States;

9 (4) any agency, authority, or instrumentality of
10 any entity referred to in paragraph (1), (2), or (3);
11 or

12 (5) any officer, agent, or employee of any entity
13 referred to in paragraph (1), (2), or (3) acting as
14 such in the course of his or her official duty.

15 **SEC. 518. EFFECT ON OTHER REGULATIONS.**

16 Nothing in this subtitle precludes the Commission or
17 a State commission from exercising its jurisdiction under
18 otherwise applicable law to protect utility customers.

19 **SEC. 519. ENFORCEMENT.**

20 The Commission shall have the same powers as set
21 forth in sections 306 through 317 of the Federal Power
22 Act (16 U.S.C. 825e–825p) to enforce the provisions of
23 this subtitle.

24 **SEC. 520. SAVINGS PROVISIONS.**

25 (a) IN GENERAL.—Nothing in this subtitle prohibits
26 a person from engaging in or continuing to engage in ac-

1 tivities or transactions in which it is legally engaged or
2 authorized to engage on the date of enactment of this Act,
3 if that person continues to comply with the terms of any
4 such authorization, whether by rule or by order.

5 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
6 Nothing in this subtitle limits the authority of the Com-
7 mission under the Federal Power Act (16 U.S.C. 791a and
8 following) (including section 301 of that Act) or the Nat-
9 ural Gas Act (15 U.S.C. 717 and following) (including sec-
10 tion 8 of that Act).

11 **SEC. 521. IMPLEMENTATION.**

12 Not later than 12 months after the date of enactment
13 of this Act, the Commission shall—

14 (1) promulgate such regulations as may be nec-
15 essary or appropriate to implement this subtitle; and

16 (2) submit to the Congress detailed rec-
17 ommendations on technical and conforming amend-
18 ments to Federal law necessary to carry out this
19 subtitle and the amendments made by this subtitle.

20 **SEC. 522. TRANSFER OF RESOURCES.**

21 All books and records that relate primarily to the
22 functions transferred to the Commission under this sub-
23 title shall be transferred from the Securities and Exchange
24 Commission to the Commission.

1 **SEC. 523. EFFECTIVE DATE.**

2 This subtitle shall take effect 12 months after the
3 date of enactment of this Act.

4 **SEC. 524. CONFORMING AMENDMENT TO THE FEDERAL**
5 **POWER ACT.**

6 Section 318 of the Federal Power Act (16 U.S.C.
7 825q) is repealed.

8 **Subtitle C—Public Utility**
9 **Regulatory Policies Act of 1978**

10 **SEC. 531. PROSPECTIVE REPEAL.**

11 (a) NEW CONTRACTS.—After the date of enactment
12 of this Act, no electric utility shall be required to enter
13 into a new contract or obligation to purchase or to sell
14 electric energy or capacity pursuant to section 210 of the
15 Public Utility Regulatory Policies Act of 1978.

16 (b) EXISTING RIGHTS AND REMEDIES NOT AF-
17 FECTED.—Nothing in this section affects the rights or
18 remedies of any party with respect to the purchase or sale
19 of electric energy or capacity from or to a facility deter-
20 mined to be a qualifying small power production facility
21 or a qualifying cogeneration facility under section 210 of
22 the Public Utility Regulatory Policies Act of 1978 pursu-
23 ant to any contract or obligation to purchase or to sell
24 electric energy or capacity in effect on the date of the en-
25 actment of this Act, including the right to recover the
26 costs of purchasing such electric energy or capacity.

1 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-
2 ing in this subtitle may be deemed or construed as imply-
3 ing congressional ratification of any interpretation of, or
4 any action taken pursuant to, the Public Utility Regu-
5 latory Policies Act of 1978.

6 **SEC. 532. RECOVERY OF COSTS.**

7 In order to assure recovery by electric utilities pur-
8 chasing electric energy or capacity from a qualifying facil-
9 ity pursuant to any legally enforceable obligation entered
10 into or imposed pursuant to section 210 of the Public Util-
11 ity Regulatory Policies Act of 1978 prior to the date of
12 enactment of this Act of all costs associated with such pur-
13 chases, the Federal Energy Regulatory Commission shall
14 promulgate and enforce such regulations as may be re-
15 quired to assure that no utility shall be required directly
16 or indirectly to absorb the costs associated with such pur-
17 chases from a qualifying facility after the date of the en-
18 actment of this Act. Such regulations shall be treated as
19 a rule enforceable under the Federal Power Act (16
20 U.S.C. 791a–825r).

21 **SEC. 533. DEFINITIONS.**

22 For purposes of this subtitle:

23 (1) The term “electric utility” means any per-
24 son, State agency, or Federal agency, which sells
25 electric energy.

1 (2) The term “qualifying small power produc-
2 tion facility” has the same meaning as provided in
3 section 3(17)(C) of the Federal Power Act.

4 (3) The term “qualifying cogeneration facility”
5 has the same meaning as provided in section
6 3(18)(A) of the Federal Power Act.

7 (4) The term “qualifying facility” means either
8 a qualifying small power production facility or a
9 qualifying cogeneration facility.

10 **Subtitle D—Additional Provisions** 11 **Promoting Competition**

12 **SEC. 541. AGGREGATION.**

13 Part II of the Federal Power Act (16 U.S.C. 824 and
14 following) is amended by adding at the end the following
15 section:

16 **“SEC. 221. PURCHASE OF ELECTRIC ENERGY BY RETAIL** 17 **ELECTRIC CONSUMERS.**

18 “Subject to not unduly discriminatory or preferential
19 State requirements, each retail electric consumer may des-
20 ignate any entity that aggregates consumers, including a
21 political subdivision of a State or a rural electric coopera-
22 tive, to negotiate on the consumer’s behalf the purchase
23 of retail electric energy on an aggregate basis if the group
24 of consumers is served by one or more local distribution

1 companies all of whose local distribution facilities are sub-
2 ject to open access.”.

3 **SEC. 542. INTERCONNECTION.**

4 (a) DISTRIBUTED GENERATION FACILITIES.—Sec-
5 tion 210 of the Federal Power Act is amended by adding
6 the following at the end thereof:

7 “(f) SPECIAL RULE FOR DISTRIBUTED GENERATION
8 FACILITIES.—

9 “(1) DEFINITION.—As used in this subsection
10 the term ‘distributed generation facility’ means an
11 electric power generation facility of not more than
12 10 megawatts capacity that is designed to serve re-
13 tail electric consumers at the facility site.

14 “(2) INTERCONNECTION.—A local distribution
15 company shall interconnect a distributed generation
16 facility with the local distribution facilities of such
17 company at the expense of the owner or operator of
18 the distributed generation facility if the distributed
19 generation facility owner is a retail electric consumer
20 provided local distribution service by such company
21 and such owner complies with the final rule promul-
22 gated under paragraph (3).

23 “(3) RULES.—Within one year from the date of
24 enactment of this subsection, the Commission shall
25 promulgate a final rule to establish safety, reli-

1 ability, and power quality standards relating to dis-
2 tributed generation facilities. To the extent feasible,
3 the Commission shall develop the standards through
4 a process involving interested parties. For purposes
5 of developing such standards, the Commission shall
6 establish an advisory committee composed of quali-
7 fied experts to make recommendations to the Com-
8 mission.”.

9 (b) INTERCONNECTION OF OTHER FACILITIES.—
10 Section 210 of the Federal Power Act is amended as fol-
11 lows:

12 (1) In subsection (a)(1) (16 U.S.C.
13 824i(a)(1))—

14 (A) by inserting “transmitting utility, local
15 distribution companies” after “electric utility,”;

16 (B) by inserting “any transmitting utility,”
17 after “small power production facility,” in sub-
18 paragraph (A); and

19 (C) by inserting “or distribution” after
20 “transmission” in subparagraph (D).

21 (2) In subsection (b)(2) (16 U.S.C. 824i(b)(2))
22 by striking “an evidentiary hearing” and inserting
23 “a hearing”.

24 (3) In subsection (c)(2) by striking “or” at the
25 end of subparagraph (B), by striking “and” the end

1 of subparagraph (C) and inserting “or”, and adding
2 the following at the end thereof:

3 “(D) promote competition in electricity
4 markets, and”.

5 (4) In subsection (d) by deleting the last sen-
6 tence.

7 **TITLE VI—FEDERAL ELECTRIC**
8 **UTILITIES**

9 **Subtitle A—Tennessee Valley**
10 **Authority**

11 **SEC. 601. DEFINITIONS.**

12 For purposes of this subtitle:

13 (1) The term “Commission” means the Federal
14 Energy Regulatory Commission.

15 (2) The term “distributor” means a municipal
16 or cooperative organization that owns, controls, or
17 operates local distribution facilities and which on
18 December 31, 1997, purchased electric power at
19 wholesale from the Tennessee Valley Authority
20 under an all-requirements contract.

21 (3) The term “distributor service area” means
22 the geographic area within which a distributor is au-
23 thorized by State law to sell electric power to retail
24 electric consumers on the date of enactment of this
25 Act.

1 (4) The term “electric utility” has the same
2 meaning as provided by section 3(22) of the Federal
3 Power Act (16 U.S.C. 796(22)).

4 (5) The term “excess electric power” means
5 that portion of the electric power and capacity that
6 is available to the Tennessee Valley Authority and
7 which exceeds the Tennessee Valley Authority’s firm
8 power supply obligations under contracts entered
9 into in accordance with sections 10, 11, and 12 of
10 the Tennessee Valley Authority Act of 1933 (16
11 U.S.C. 831i, 831j, and 831k).

12 (6) The term “public utility” has the same
13 meaning as provided by section 201(e)(1) of the
14 Federal Power Act (16 U.S.C. 824(e)(1)).

15 (7) The term “retail electric consumer” has the
16 same meaning as provided by section 3 of the Fed-
17 eral Power Act (16 U.S.C. 796).

18 (8) The term “Tennessee Valley Region” means
19 the geographic area in which the Tennessee Valley
20 Authority or its distributors were the primary source
21 of electric power on December 31, 1997.

22 **SEC. 602. WHOLESALE COMPETITION IN THE TENNESSEE**
23 **VALLEY REGION.**

24 (a) AMENDMENTS TO THE FEDERAL POWER ACT.—

1 (1) Section 212(f) of the Federal Power Act
2 (16 U.S.C. 824k(f)), relating to interconnection or
3 wheeling orders that result in the sale or delivery of
4 electric power outside the Tennessee Valley Region,
5 is repealed.

6 (2) Section 212(j) of the Federal Power Act
7 (16 U.S.C. 824k(j)), relating to transmission within
8 the Tennessee Valley Region, is repealed.

9 (b) AMENDMENTS TO THE TENNESSEE VALLEY AU-
10 THORITY ACT.—(1) The third sentence of the first para-
11 graph of section 15d(a) of the Tennessee Valley Authority
12 Act of 1933 (16 U.S.C. 831n–4(a)), limiting the sale or
13 delivery of electric power outside the area for which the
14 Tennessee Valley Authority or its distributors were the
15 primary source of electric power on July 1, 1957, is re-
16 pealed.

17 (2) The second and third paragraphs of section
18 15d(a) of the Tennessee Valley Authority Act of 1933 (16
19 U.S.C. 831n–4(a)) are repealed.

20 **SEC. 603. TENNESSEE VALLEY AUTHORITY POWER SALES.**

21 (a) LIMIT ON RETAIL SALES BY TENNESSEE VALLEY
22 AUTHORITY.—Notwithstanding sections 10, 11, and 12 of
23 the Tennessee Valley Authority Act (16 U.S.C. 831i), the
24 Tennessee Valley Authority shall not sell electric power at
25 retail, except it may sell electric power to—

1 (1) a retail electric consumer (or predecessor in
2 interest) that had a contract for the purchase of
3 electric power from the Tennessee Valley Authority
4 on the date of enactment of this Act; or

5 (2) a retail electric consumer who consumes
6 that electric power within a distributor service area,
7 if—

8 (A) the distributor's firm electric power
9 purchases from the Tennessee Valley Authority
10 are 50 percent or less of the distributor's total
11 retail sales; or

12 (B) the distributor agrees that the Ten-
13 nessee Valley Authority can sell electric power
14 to such retail electric consumer.

15 (b) REGIONAL PREFERENCE FOR WHOLESALE
16 POWER SALES.—

17 (1) REGIONAL PREFERENCE.—Notwithstanding
18 sections 10, 11, and 12, or any other provision of
19 the Tennessee Valley Authority Act of 1933 (16
20 U.S.C. 831 and following), the sale of electric power
21 at wholesale by the Tennessee Valley Authority for
22 use outside the Tennessee Valley Region shall be
23 limited to excess electric power.

24 (2) SALES OF EXCESS ELECTRIC POWER.—The
25 Tennessee Valley Authority shall not offer firm ex-

1 cess electric power under an agreement with a term
2 of three years or longer to a new wholesale customer
3 at rates, terms, and conditions more favorable than
4 those offered to any distributor for comparable elec-
5 tric power, taking into account such factors as the
6 amount of electric power sold, the firmness of such
7 power, and the length of the contract term unless
8 the distributor or distributors that are purchasing
9 electric power under equivalent firm power contracts
10 agree to the sale to the new customer.

11 Nothing in this subsection shall prevent the Tennessee
12 Valley Authority from making exchange power arrange-
13 ments with other electric utilities when economically fea-
14 sible.

15 (c) REGULATION OF TVA WHOLESALE POWER
16 SALES.—Notwithstanding section 201(f) of the Federal
17 Power Act, sections 205, 206, 208, and 210 through 213
18 and sections 301 through 304, 306, 307 (except the last
19 sentence of paragraph (c)), 308, 309, 313, and 317 of the
20 Federal Power Act apply to sales of electric power at
21 wholesale by the Tennessee Valley Authority for use out-
22 side the Tennessee Valley Region to the same extent and
23 in the same manner as such provisions apply to wholesale
24 sales of electric power in interstate commerce by a public

1 utility otherwise subject to the jurisdiction of the Commis-
2 sion under part II of such Act.

3 (d) APPLICATION OF TENNESSEE VALLEY AUTHOR-
4 ITY ACT TO SALES OUTSIDE TENNESSEE VALLEY RE-
5 GION.—The third proviso of section 10 of the Tennessee
6 Valley Authority Act of 1933 (16 U.S.C. 831i) and the
7 second and third provisos of section 12 of the Tennessee
8 Valley Authority Act of 1933 (16 U.S.C. 831k) shall not
9 apply to any sale of excess electric power by the Tennessee
10 Valley Authority for use outside the Tennessee Valley Re-
11 gion.

12 **SEC. 604. TENNESSEE VALLEY AUTHORITY ELECTRIC GEN-**
13 **ERATION FACILITIES.**

14 Section 15d(a) of the Tennessee Valley Authority Act
15 of 1933 (16 U.S.C. 831n-4(a)) is amended by striking
16 the period at the end of the second sentence and inserting
17 the following: “, if the Corporation determines that the
18 construction, acquisition, enlargement, improvement, or
19 replacement of any plant or facility used or to be used
20 for the generation of electric power is necessary to supply
21 the demands of distributors (as defined in section 601 of
22 the Electricity Competition and Reliability Act) and retail
23 electric consumers of the Corporation, to the extent per-
24 mitted by section 603(a) of such Act.”.

1 **SEC. 605. RENEGOTIATION OF ALL REQUIREMENTS POWER**
2 **CONTRACTS.**

3 (a) RENEGOTIATION.—Within one year following the
4 date of enactment of this Act, the Tennessee Valley Au-
5 thority and the distributors shall renegotiate their existing
6 all requirements power contracts with respect to—

7 (1) the remaining term;

8 (2) the length of the termination notice;

9 (3) the amount of electric power a distributor
10 may purchase from an electric utility other than the
11 Tennessee Valley Authority, and access to the Ten-
12 nessee Valley Authority transmission system for that
13 electric power; and

14 (4) stranded cost recovery.

15 (b) RESOLUTION.—If the parties are unable to reach
16 agreement with regard to any of the issues under sub-
17 section (a) within the one-year period set forth in sub-
18 section (a), the distributor shall have the right to termi-
19 nate the contract upon not less than three years notice.

20 **SEC. 606. REGULATION OF TENNESSEE VALLEY AUTHORITY**
21 **TRANSMISSION SYSTEM.**

22 Notwithstanding sections 201(b)(1) and 201(f) of the
23 Federal Power Act, sections 202(h), 205, 206, 208, and
24 210 through 213 and sections 301 through 304, 306, 307
25 (except the last sentence of subsection (c)), 308, 309, 313,
26 and 317 of the Federal Power Act apply to the trans-

1 mission and local distribution of electric power by the Ten-
2 nessee Valley Authority to the same extent and in the
3 same manner as such provisions apply to the transmission
4 of electric power in interstate commerce by a public utility
5 otherwise subject to the jurisdiction of the Commission
6 under part II of such Act.

7 **SEC. 607. REGULATION OF TENNESSEE VALLEY AUTHORITY**
8 **DISTRIBUTORS.**

9 (a) ELECTION TO REPEAL TENNESSEE VALLEY AU-
10 THORITY REGULATION OF DISTRIBUTORS.—Upon the
11 election of a distributor, the third proviso of section 10
12 of the Tennessee Valley Authority Act of 1933 (16 U.S.C.
13 831i) and the second and third provisos of section 12 of
14 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
15 831k) shall not apply to wholesale sales of electric power
16 by the Tennessee Valley Authority in the Tennessee Valley
17 Region after the date of enactment of this Act, and the
18 Tennessee Valley Authority shall not be authorized to reg-
19 ulate, by means of rules, contract provisions, resale rate
20 schedules, contract termination rights, or any other meth-
21 od, any rates, terms, or conditions imposed on the resale
22 of such electric power by such distributor, or any rates,
23 terms, or conditions for the use of local distribution facili-
24 ties.

1 (b) AUTHORITY OF GOVERNING BODIES OF DIS-
2 TRIBUTORS.—Any regulatory authority exercised by the
3 Tennessee Valley Authority over any distributor making
4 an election authorized in subsection (a) shall be exercised
5 by the governing body of such distributor, in accordance
6 with the laws of the State in which it is organized. In the
7 event a distributor does not make the election authorized
8 in subsection (a), the provisions of the Tennessee Valley
9 Authority Act specified in that subsection shall continue
10 to apply for the duration of any wholesale power contract
11 between the Tennessee Valley Authority and the dis-
12 tributor, according to its terms.

13 (c) USE OF FUNDS.—In any contract between the
14 Tennessee Valley Authority and a distributor for the pur-
15 chase of at least 70 percent of the distributor's require-
16 ments for the sale of electric power, the Tennessee Valley
17 Authority shall include such terms and conditions as may
18 be reasonably necessary to assure that the financial bene-
19 fits of a distributor's electric system operations are allo-
20 cated to the distributor's retail electric consumers.

21 (d) REMOVAL OF PURPA RATEMAKING AUTHOR-
22 ITY.—Section 3(17) of the Public Utility Regulatory Poli-
23 cies Act of 1978 (16 U.S.C. 2602(17)) is amended by
24 striking “, and in the case of an electric utility with re-
25 spect to which the Tennessee Valley Authority has rate-

1 making authority, such term means the Tennessee Valley
2 Authority.

3 **SEC. 608. STRANDED COST RECOVERY.**

4 (a) IN GENERAL.—Within six months after the date
5 of enactment of this Act, or sooner as part of any distribu-
6 tors renegotiation of its contract under section 605, the
7 Tennessee Valley Authority shall make a good faith effort
8 to reach agreement with distributors for recovery of its
9 stranded costs. The Tennessee Valley Authority and the
10 distributors shall submit jointly, or if they disagree, sub-
11 mit separately, a stranded cost recovery plan or plans to
12 the Commission for review. The Commission shall ap-
13 prove, reject, or modify such plan or plans and issue an
14 order within one year of the date of enactment of this Act,
15 to provide for recovery of stranded costs (as determined
16 by the Commission) by the Tennessee Valley Authority
17 from any departing power or transmission customer. This
18 order shall provide that customers that did not cause
19 stranded costs to be incurred by the Tennessee Valley Au-
20 thority are not obligated to pay such costs on behalf of
21 other customers. The Tennessee Valley Authority is au-
22 thorized to recover such of its stranded costs as are ap-
23 proved by the Commission. The Tennessee Valley Author-
24 ity may not recover stranded costs after September 30,

1 2007, unless the person against whom such charges are
2 assessed agrees otherwise.

3 (b) DEBT.—Stranded costs recovered by the Ten-
4 nessee Valley Authority under subsection (a) shall be used
5 to pay down the Tennessee Valley Authority's debt to the
6 extent determined by the Tennessee Valley Authority to
7 be consistent with proper financial management. The Ten-
8 nessee Valley Authority may not use amounts recovered
9 to pay for additions to the Tennessee Valley Authority's
10 generation capacity.

11 (c) UNBUNDLING.—Any stranded cost recovery
12 charges assessed by the Tennessee Valley Authority on re-
13 tail or wholesale customers or assessed on retail electric
14 consumers served by distributors shall be unbundled from
15 the retail or wholesale rate otherwise applicable to that
16 consumer and stated on the consumer's bill as a separate
17 charge.

18 (d) REPORT.—Beginning in fiscal year 2001, as part
19 of the annual management report submitted by the Ten-
20 nessee Valley Authority to Congress, the Tennessee Valley
21 Authority shall also specifically report:

22 (1) the status of the Tennessee Valley
23 Authority's long-range financial plans and the
24 progress toward its goal of competitively priced elec-
25 tric power, and a general discussion of the Ten-

1 Tennessee Valley Authority's prospects on meeting the
2 objectives of the Ten Year Business Outlook issued
3 on July 22, 1997;

4 (2) any changes in assumptions since the pre-
5 vious report that may have a material effect on the
6 Tennessee Valley Authority's long-range financial
7 plans;

8 (3) the source of funds used for any generation
9 and transmission capacity additions;

10 (4) the use or other disposition of amounts re-
11 covered by the Tennessee Valley Authority under the
12 Tennessee Valley Authority Act and this Act;

13 (5) the amount by which the Tennessee Valley
14 Authority's publicly-held debt was reduced; and

15 (6) the projected amount by which the Ten-
16 nessee Valley Authority's publicly held debt will be
17 reduced.

18 **SEC. 609. APPLICATION OF ANTITRUST LAW.**

19 (a) IN GENERAL.—The Tennessee Valley Authority
20 shall be subject to the antitrust laws of the United States
21 with respect to the operation of its electric power and
22 transmission systems. For purposes of this section, the
23 term “antitrust laws” has the meaning given such term
24 in subsection (a) of the first section of the Clayton Act
25 (15 U.S.C. 12(a)), except that such term includes section

1 5 of the Federal Trade Commission Act (15 U.S.C. 45)
2 to the extent that such section 5 applies to unfair methods
3 of competition.

4 (b) DAMAGES.—No damages, interest on damages,
5 costs, or attorney's fees may be recovered under section
6 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
7 15c) from the Tennessee Valley Authority.

8 **SEC. 610. SAVINGS PROVISION.**

9 Nothing in this subtitle shall affect section 15d(b) of
10 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
11 831n-4(b)), providing that bonds issued by the Tennessee
12 Valley Authority shall not be obligations of, nor shall pay-
13 ment of the principal thereof or interest thereon be guar-
14 anteed by, the United States.

15 **Subtitle B—Bonneville Power**
16 **Administration**

17 **SEC. 621. DEFINITIONS.**

18 As used in this subtitle:

19 (1) The term 'Bonneville Administrator' means
20 the Administrator of the Bonneville Power Adminis-
21 tration.

22 (2) The term 'Bonneville Transmission System'
23 means transmission facilities owned or leased by the
24 United States and operated by the Bonneville Power

1 Administration or by another entity under section
2 202(h) of the Federal Power Act.

3 (3) The terms “Commission”, “electric utility”,
4 “retail electric consumer”, and “transmitting util-
5 ity” have the same meanings as provided by section
6 3 of the Federal Power Act (16 U.S.C. 796).

7 (4) The term “major resource” has the mean-
8 ing given such term in section 3(12) of the Pacific
9 Northwest Electric Power Planning and Conserva-
10 tion Act.

11 (5) The term ‘Pacific Northwest’ has the mean-
12 ing given that term in section 3(14) of the Pacific
13 Northwest Electric Power Planning and Conserva-
14 tion Act (16 U.S.C. 839a(14)).

15 **SEC. 622. REGULATION OF BONNEVILLE TRANSMISSION**
16 **SYSTEM.**

17 (a) IN GENERAL.—After September 30, 2001, not-
18 withstanding section 201(f) of the Federal Power Act, sec-
19 tions 202(h), 205, 206, 208, and 210 through 213 and
20 sections 301 through 304, 306, 307 (except the last sen-
21 tence of paragraph (c)), 308, 309, 313, and 317 of the
22 Federal Power Act apply to the Bonneville Transmission
23 System and the transmission of electric energy over the
24 Bonneville Transmission System.

1 (b) ADDITIONAL RULES.—Any determination by the
2 Commission of rates, terms, and conditions for the trans-
3 mission of electric energy under subsection (a) shall be
4 subject to the following rules:

5 (1) Phasing in changes in transmission rates or
6 charges that would cause unreasonable cost shifts
7 among transmission customers if implemented at
8 once.

9 (2) Mitigating unreasonable adverse effects on
10 transmission customers in the Pacific Northwest
11 that would otherwise result from changes in the
12 treatment of costs to acquire transmission to serve
13 customers historically served by General Transfer
14 Agreements entered into between the Bonneville Ad-
15 ministrator and other transmitting utilities prior to
16 the enactment of this Act. This paragraph shall not
17 apply if the Bonneville Transmission System is oper-
18 ated by a regional transmission organization ap-
19 proved by the Commission.

20 (3) No direct assignment of the costs of trans-
21 mission facilities that were included in the Bonne-
22 ville Administrator's transmission rates in effect on
23 October 1, 1998, or costs for replacement of such fa-
24 cilities.

1 (4) Assuring the Bonneville Power Administra-
2 tion's transmission rates and charges are established
3 sufficient to—

4 (A) recover Federal investment in the Bon-
5 neville Transmission System over a reasonable
6 period of years after first meeting all the Bon-
7 neville Power Administration's other trans-
8 mission costs and expenses; and

9 (B) produce the revenues necessary to as-
10 sure timely payment of all transmission-related
11 costs and expenses;

12 provided that this paragraph shall not be construed
13 to require any particular methodology for setting
14 transmission rates.

15 (5) Rules established by the Commission to—

16 (A) assure transmission access is provided
17 over the Bonneville Transmission System for
18 hydroelectric power that must be generated and
19 transmitted at a particular time in order to re-
20 duce levels of dissolved nitrogen gas harmful to
21 fish, with such access to be provided in a man-
22 ner that displaces other electric energy using
23 the Bonneville Transmission System but does
24 not impair service to loads, require operations
25 that may damage generation facilities, or alter

1 commercial relationships between the electric
2 utility whose electric energy was displaced and
3 its customer; and

4 (B) provide methods for compensation be-
5 tween or among the electric utility that sold the
6 hydroelectric power and the party or parties af-
7 fected by the displacement of electric energy.

8 (6) Section 623 of this Act (relating to sur-
9 charge on transmission rates to recover otherwise
10 nonrecoverable power costs).

11 (c) APPLICABILITY.—Subsection (a) shall not apply
12 to—

13 (1) the Bonneville Power Administration's ac-
14 tivities other than transmission of electric energy
15 over the Bonneville Transmission System; or

16 (2) a contract in effect on the date of enact-
17 ment of this Act, except for rates which are adjust-
18 able by the Bonneville Administrator under the con-
19 tract; a treaty of the United States; or a contract
20 concerning the delivery of electric energy and capac-
21 ity entered into by entities designated pursuant to
22 such a treaty.

23 (d) PRIORITY OF PAYMENTS.—Nothing in this sec-
24 tion shall alter or be construed to alter the priority of pay-
25 ments established in section 13(b) of the Federal Colum-

1 bia River Transmission System Act (16 U.S.C. 838k(b))
2 or the requirements of section 11 of that Act (16 U.S.C.
3 838i).

4 (e) COSTS AND REVENUES.—Costs and revenues
5 shall be allocated to the Bonneville Transmission System
6 in accordance with rules to be promulgated by the Com-
7 mission.

8 (f) HEARINGS.—In any proceeding, or part of a pro-
9 ceeding, that the Commission sets for hearing before an
10 administrative law judge, with respect to the rates, terms,
11 or conditions for transmission of electric energy by the
12 Bonneville Power Administration, all evidentiary hearings
13 shall be conducted in the Pacific Northwest.

14 **SEC. 623. SURCHARGE ON TRANSMISSION RATES TO RE-**
15 **COVER NONRECOVERABLE POWER COSTS.**

16 (a) SURCHARGE AUTHORITY.—By October 1, 2001,
17 notwithstanding section 201(f) of the Federal Power Act,
18 the Bonneville Administrator shall propose and the Com-
19 mission shall, by accepting or modifying the Bonneville
20 Administrator's proposal, authorize the Administrator to
21 place a surcharge on rates or charges for transmission
22 services over the Bonneville Transmission System when
23 necessary to recover power costs that cannot be recovered
24 through power revenues to meet the cost recovery require-
25 ments of section 7(a)(1) of the Pacific Northwest Electric

1 Power Planning and Conservation Act (16 U.S.C.
2 839e(a)(1)).

3 (b) REQUIREMENTS.—The transmission surcharge
4 referred to in subsection (a) shall—

5 (1) not recover more than \$600,000,000 nor
6 more than \$100,000,000 in any fiscal year;

7 (2) be available only between October 1, 2001,
8 and October 1, 2016;

9 (3) be implemented by the Bonneville Adminis-
10 trator only when the Administrator projects that
11 available financial reserves in the Bonneville Power
12 Administration Fund attributable to the power func-
13 tion will fall below \$150,000,000; and

14 (4) not apply to use of the Bonneville Trans-
15 mission System for sales of electric energy for use
16 outside the Pacific Northwest.

17 (c) IMPLEMENTATION.—The Bonneville Adminis-
18 trator shall have sole discretion to implement the sur-
19 charge on rates or charges for transmission services au-
20 thorized by the Commission under subsection (a). Before
21 implementing the surcharge, the Bonneville Administrator
22 shall—

23 (1) make available information concerning the
24 need for and amount of the surcharge, and its pro-
25 posed effective date; and

1 (2) conduct a public process of not less than 30
2 days in the Pacific Northwest to receive comments
3 on implementation of the surcharge and receive rec-
4 ommendations from the Pacific Northwest Electric
5 Power and Conservation Planning Council con-
6 cerning cost management options that could mitigate
7 the need to implement the surcharge.

8 If, after taking into consideration those comments and
9 recommendations and ensuring that reasonable and pru-
10 dent alternatives to implementation of the surcharge have
11 been undertaken, the Bonneville Administrator decides to
12 implement a surcharge, the Administrator may implement
13 the surcharge by filing the proposed surcharge with the
14 Commission. The surcharge shall take effect on the Bon-
15 neville Administrator's proposed effective date, but no ear-
16 lier than 60 days following the Administrator's filing of
17 the proposed surcharge to the Commission for approval.

18 (d) COMMISSION REVIEW.—Within 120 days after
19 the effective date of the surcharge, the Commission shall
20 accept, reject, or modify the surcharge and communicate
21 its decision to the Bonneville Administrator. If the Com-
22 mission rejects or modifies the surcharge, the Commission
23 may order the Bonneville Power Administration to refund,
24 with interest, the portion of the surcharge the Commission
25 found not justified or the Commission may authorize the

1 Bonneville Power Administration to recover amounts from
2 customers who underpaid or did not pay the surcharge.
3 If the Commission orders modification of the surcharge,
4 such modified charge shall be effective on the date and
5 for the time period specified by the Commission.

6 (e) REPAYMENT.—Any amounts recovered through
7 the transmission surcharge shall be treated as loans to the
8 Bonneville Power Administration's power function by the
9 transmission function. The Bonneville Power Administra-
10 tion shall repay the loans as soon as possible from power
11 revenues once the Bonneville Power Administration is able
12 to meet other power cost recovery and Treasury repay-
13 ment obligations on an annual basis using power revenues.
14 To the extent practicable, the Administrator shall refund
15 all or a portion of the surcharge collected from trans-
16 mission customers, as directed and determined appro-
17 priate by the Commission. The borrowed revenues shall
18 bear interest at a rate determined appropriate by the
19 Commission.

20 (f) COST RECOVERY.—For the recovery of costs re-
21 lating to any generation or conservation resources fi-
22 nanced by debt issued by a non-Federal party before Octo-
23 ber 1, 1998 (and any refundings and refinancing thereof),
24 and secured by an obligation of the Bonneville Power Ad-
25 ministration to make payments or net bill power and

1 transmission service that cannot be recovered through
2 power rates and charges and paid in accordance with the
3 application of revenues and priority of payments specified
4 by section 13(b) of the Federal Columbia River Trans-
5 mission System Act of 1974 (16 U.S.C. 838k(b)), the pro-
6 visions of this section apply, except for the recovery limita-
7 tions under subsection (b)(1) and the time limits under
8 subsection (b)(2), but only to the extent such recovery
9 would have been allowed under laws applicable to the Bon-
10 neville Power Administration as of October 1, 1998.

11 **SEC. 624. LIMIT ON RETAIL SALES BY BONNEVILLE POWER**
12 **ADMINISTRATION.**

13 Notwithstanding section 5(a) of the Bonneville
14 Project Act (16 U.S.C. 832d(a)), the Bonneville Power
15 Administration shall not sell electric energy or capacity to
16 any retail electric consumer that did not have a contract
17 for the purchase of electric energy from the Bonneville
18 Power Administration for use at specific facilities on Octo-
19 ber 1, 1998.

20 **SEC. 625. ACQUISITION OF NEW MAJOR GENERATING RE-**
21 **SOURCES.**

22 Section 6 of the Pacific Northwest Electric Power
23 Planning and Conservation Act (16 U.S.C. 839d) is
24 amended by adding the following new subsection at the
25 end thereof:

1 “(n) ACQUISITION OF NEW MAJOR GENERATING RE-
2 SOURCES.—Notwithstanding any other provision of law,
3 the Administrator shall not acquire any new major re-
4 source after the date of enactment of this subsection un-
5 less the Commission determines that satisfactory contrac-
6 tual and other financial arrangements have been made to
7 ensure that the customer or customers on whose behalf
8 the resource is acquired commit to pay the full cost of
9 the resource and the Administrator shall not acquire any
10 new major resource that the Administrator reasonably ex-
11 pects may require implementation of the surcharge au-
12 thorized by section 623 of the Electricity Competition and
13 Reliability Act.”.

14 **SEC. 626. APPLICATION OF ANTITRUST LAW.**

15 (a) IN GENERAL.—The Bonneville Power Adminis-
16 tration shall be subject to the antitrust laws of the United
17 States with respect to its sale of electric energy and capac-
18 ity and the operation of its transmission system. For pur-
19 poses of this section, the term “antitrust laws” has the
20 meaning given such term in subsection (a) of the first sec-
21 tion of the Clayton Act (15 U.S.C. 12(a)), except that
22 such term includes section 5 of the Federal Trade Com-
23 mission Act (15 U.S.C. 45) to the extent that such section
24 5 applies to unfair methods of competition.

1 (b) DAMAGES.—No damages, interest on damages,
2 costs, or attorney’s fees may be recovered under section
3 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
4 15c) from the Bonneville Power Administration.

5 **SEC. 627. CONFORMING AMENDMENTS.**

6 (a) FEDERAL POWER ACT.—Section 212(i) of the
7 Federal Power Act (16 U.S.C. 824(i)) is repealed.

8 (b) FEDERAL COLUMBIA RIVER TRANSMISSION SYS-
9 TEM ACT.—(1) Section 3(c) of the Federal Columbia
10 River Transmission System Act (16 U.S.C. 838a(c)) is
11 amended by inserting “, and transmission facilities with
12 an estimated capital cost exceeding \$30,000,000 in 1998
13 dollars, adjusted using the United States Gross Domestic
14 Product Implicit Price Deflator Index”, after “own facili-
15 ties”.

16 (2) Section 6 of the Federal Columbia River Trans-
17 mission System Act (16 U.S.C. 838d) is repealed.

18 (3) Section 9 of the Federal Columbia River Trans-
19 mission System Act (16 U.S.C. 838g) is amended to read
20 as follows:

21 **“SEC. 9. RATES AND CHARGES.**

22 “Schedules of rates and charges for the sale, includ-
23 ing dispositions to Federal agencies, of all electric power
24 made available to the Administrator pursuant to section
25 8 of this Act or otherwise acquired shall be established—

1 “(1) with a view to encouraging the widest pos-
2 sible diversified use of electric power at the lowest
3 possible rates to consumers consistent with sound
4 business principles;

5 “(2) having regard to the recovery (upon the
6 basis of the application of such rate schedules to the
7 capacity of the electric facilities of the projects) of
8 the cost of producing such electric power, including
9 the amortization of the capital investment allocated
10 to power over a reasonable period of years and pay-
11 ments provided for in section 11(b)(9) of this Act;
12 and

13 “(3) at levels to produce such additional power
14 revenues as may be required, in the aggregate with
15 all other power revenues of the Administrator, to
16 pay when due the principal of, premiums, discounts,
17 and expenses in connection with the issuance of and
18 interest on all bonds issued and outstanding pursu-
19 ant to this Act for other than the construction, ac-
20 quisition, and replacement of the Federal trans-
21 mission system, and amounts required to establish
22 and maintain reserve and other funds and accounts
23 established in connection therewith.

24 Electric power rates under this section shall be established
25 by the Administrator in accordance with section 7 of the

1 Pacific Northwest Electric Power Planning and Conserva-
2 tion Act.”.

3 (4) Section 10 of the Federal Columbia River Trans-
4 mission System Act (16 U.S.C. 838h) is repealed.

5 (c) REGIONAL PREFERENCE ACT.—Section 6 of Pub-
6 lic Law 88–552 (16 U.S.C. 837e), commonly known as
7 the “Regional Preference Act”, is amended by striking
8 “Federal energy or” in the first sentence and by striking
9 the second sentence.

10 (d) NORTHWEST POWER ACT.—(1) Section 7(a)(1)
11 of the Pacific Northwest Electric Power Planning and
12 Conservation Act (16 U.S.C. 839e(a)(1)) is amended to
13 read as follows:

14 “(a)(1) The Administrator shall establish, and peri-
15 odically review and revise, rates for the sale and disposi-
16 tion of electric power and shall periodically review and,
17 if necessary, propose revisions to rates for the trans-
18 mission of electric power. Rates for the sale and disposi-
19 tion of electric power shall be established and, as appro-
20 priate, revised to recover, in accordance with sound busi-
21 ness principles, the costs associated with the acquisition
22 and conservation of electric power, including the amortiza-
23 tion of the Federal investment allocable to electric power
24 rates in the Federal Columbia River Power System (in-
25 cluding irrigation electric power-related costs required to

1 be repaid out of electric power revenues) over a reasonable
2 period of years and the other costs and expenses incurred
3 by the Administrator pursuant to this Act and other provi-
4 sions of law. Rates for the sale and disposition of electric
5 power shall be established in accordance with section 9
6 of the Federal Columbia River Transmission System Act
7 (16 U.S.C. 838g), section 5 of the Flood Control Act of
8 1944 (16 U.S.C. 825s), and this Act.”.

9 (2) Section 7(a)(2) of the Pacific Northwest Electric
10 Power Planning and Conservation Act (16 U.S.C.
11 839e(a)(2)) is amended—

12 (A) by striking “Rates” and inserting “Power
13 rates”;

14 (B) by inserting “and” after the comma in sub-
15 paragraph (A);

16 (C) by striking “, and” and inserting a period
17 at the end of subparagraph (B); and

18 (D) by striking subparagraph (C).

19 (3) Section 7(i) of the Pacific Northwest Electric
20 Power Planning and Conservation Act (16 U.S.C. 839e(i))
21 is amended by inserting “power” after “establishing” in
22 the first sentence.

23 (4) Section 9(d) of the Pacific Northwest Electric
24 Power Planning and Conservation Act (16 U.S.C.
25 839f(d)) is amended by striking “transmission access,”

1 and inserting “power” before “services” in the second sen-
2 tence.

3 (5) Section 9(i)(3) of the Pacific Northwest Electric
4 Power Planning and Conservation Act (16 U.S.C.
5 839f(i)(3)) is amended by inserting “power” before “serv-
6 ices” each place it appears, and by striking “trans-
7 mission,” in the first sentence.

8 (e) BONNEVILLE PROJECT ACT.—Section 2(e) of the
9 Bonneville Project Act (16 U.S.C. 832a(e)) is amended
10 by striking the colon and all that follows and inserting
11 a period.

12 **Subtitle C—Other Power**

13 **Marketing Administrations**

14 **SEC. 631. DEFINITIONS.**

15 For purposes of this subtitle:

16 (1) The term “Administrator” means the ad-
17 ministrator of a Federal power marketing adminis-
18 tration.

19 (2) The term “Commission” means the Federal
20 Energy Regulatory Commission.

21 (3) The term “Federal power marketing admin-
22 istrations” means the Western Area Power Adminis-
23 tration, Southwestern Power Administration, and
24 Southeastern Power Administration.

1 (4) The term “power generating agencies”
2 means the Bureau of Reclamation, the Army Corps
3 of Engineers, and the International Boundary and
4 Water Commission.

5 (5) The term “public utility” means a public
6 utility as defined in section 201(e)(1) the Federal
7 Power Act.

8 **SEC. 632. WHOLESALE POWER SALES BY FEDERAL POWER**
9 **MARKETING ADMINISTRATIONS.**

10 (a) RATES, TERMS, AND CONDITIONS.—(1) All rates
11 and charges made, demanded, or received for the sale of
12 electric energy and capacity by each Federal power mar-
13 keting administration to its electric energy customers shall
14 be the lowest possible rates and charges that will recover
15 from such customers over a reasonable period of years,
16 in accordance with sound business principles, all costs in-
17 curred by the United States for the production of electric
18 energy sold by such Federal power marketing administra-
19 tion, including repayment of the capital investment allo-
20 cated to power and costs assigned by Acts of Congress
21 to power for repayment.

22 (2) The Commission may modify proposed rates sub-
23 mitted by any Federal power marketing administration
24 and establish terms and conditions consistent with this
25 subsection. In its determination of rates, terms, and condi-

1 tions for the sale of electric energy and capacity by the
2 Federal power marketing administrations the Commission
3 shall not review policy judgments and interpretations of
4 laws and regulations made by the power generating agen-
5 cies.

6 (b) EXISTING RATES.—All rates, terms, and condi-
7 tions for the sale of electric energy and capacity by the
8 Federal power marketing administrations placed into ef-
9 fect on a final basis prior to the date of enactment of this
10 Act shall remain in full force and effect unless the Com-
11 mission determines, after a hearing held upon its own mo-
12 tion or upon complaint, that the rates, terms, and condi-
13 tions are inconsistent with subsection (a)(1) and estab-
14 lishes new rates, terms, and conditions.

15 (c) PERIODIC REVIEW.—The Administrators shall
16 periodically review the rates and charges made, demanded,
17 or received by each Federal power marketing administra-
18 tion for the sale of electric energy and capacity. In the
19 event the rates and charges made, demanded, or received
20 by any Federal power marketing administration are incon-
21 sistent with subsection (a)(1), the Administrator of that
22 administration shall propose revised rates. Such rates
23 shall be established in accordance with this section, section
24 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), sec-
25 tion 9(c) of the Reclamation Project Act of 1939 (43

1 U.S.C. 485h(c)), and the Acts specifically applicable to in-
2 dividual projects of the power systems of the power gener-
3 ating agencies.

4 **SEC. 633. REGULATION OF FEDERAL POWER MARKETING**
5 **ADMINISTRATION TRANSMISSION SYSTEMS.**

6 Notwithstanding section 201(f) of the Federal Power
7 Act, sections 202(h), 205, 206, 208, and 210 through 213
8 and sections 301 through 304, 306, 307 (except the last
9 sentence of paragraph (c)), 308, 309, 313, and 317 of the
10 Federal Power Act apply to the transmission of electric
11 energy by the Federal power marketing administrations
12 to the same extent and in the same manner as such provi-
13 sions apply to the transmission of electric energy in inter-
14 state commerce by a public utility otherwise subject to the
15 jurisdiction of the Commission under part II of such Act.

16 **SEC. 634. ACCOUNTING.**

17 Not later than six months after the date of enactment
18 of this Act, the Commission shall promulgate rules con-
19 taining each of the following:

20 (1) ACCOUNTING PRINCIPLES AND REQUIRE-
21 MENTS.—Procedures to ensure that the Federal
22 power marketing administrations utilize the same
23 accounting principles and requirements as are appli-
24 cable to public utilities pursuant to parts II and III
25 of the Federal Power Act (16 U.S.C. 792 and fol-

1 lowing) with respect to accounting for revenue, ex-
2 penses, investments, and depreciation.

3 (2) COMPLIANCE.—Procedures for the filing of
4 complaints with the Commission by interested per-
5 sons seeking to ensure compliance with the proce-
6 dures of this section.

7 (3) ADMINISTRATIVE RECONCILIATION.—Proce-
8 dures to ensure that the power generating agencies
9 and the Administrators maintain a consistent set of
10 books and records for purposes of repayment obliga-
11 tions.

12 **SEC. 635. APPLICATION OF ANTITRUST LAW.**

13 (a) IN GENERAL.—Each Federal power marketing
14 administration shall be subject to the antitrust laws of the
15 United States with respect to its sale of electric energy
16 and capacity and the operation of its transmission system.
17 For purposes of this section, the term “antitrust laws”
18 has the meaning given such term in subsection (a) of the
19 first section of the Clayton Act (15 U.S.C. 12(a)), except
20 that such term includes section 5 of the Federal Trade
21 Commission Act (15 U.S.C. 45) to the extent that such
22 section 5 applies to unfair methods of competition.

23 (b) DAMAGES.—No damages, interest on damages,
24 costs, or attorney’s fees may be recovered under section

1 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
2 15c) from a Federal power marketing administration.

3 **TITLE VII—ENVIRONMENTAL**
4 **PROVISIONS**

5 **SEC. 701. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

6 Section 1212 of the Energy Policy Act of 1992 is
7 amended to read as follows:

8 **“SEC. 1212. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

9 “(a) INCENTIVE PAYMENTS.—For electric energy
10 generated and sold by a qualified renewable energy facility
11 during the incentive period, the Secretary of Energy (re-
12 ferred to in this section as the ‘Secretary’) shall make,
13 subject to the availability of appropriations, incentive pay-
14 ments to the owner or operator of such facility. The
15 amount of such payment made to any such owner or oper-
16 ator shall be as determined under subsection (e) of this
17 section. Payments under this section may only be made
18 upon receipt by the Secretary of an incentive payment ap-
19 plication which establishes that the applicant is eligible to
20 receive such payment and which satisfies such other re-
21 quirements as the Secretary deems necessary. Such appli-
22 cation shall be in such form, and shall be submitted at
23 such time, as the Secretary shall establish.

24 “(b) QUALIFIED RENEWABLE ENERGY FACILITY.—
25 For purposes of this section, a ‘qualified renewable energy

1 facility' is a facility which generates electric energy for
2 sale using solar energy, wind, biomass, or geothermal.

3 “(c) ELIGIBILITY WINDOW.—Payments may be made
4 under this section only for electric energy generated from
5 a qualified renewable energy facility first used during the
6 period of 10 fiscal years beginning with the first full fiscal
7 year occurring after the date of enactment of this Act.

8 “(d) INCENTIVE PERIOD.—A qualified renewable en-
9 ergy facility may receive payments under this section for
10 a period of 10 fiscal years (referred to in this section as
11 the ‘incentive period’). Such period shall begin with the
12 fiscal year in which electric energy generated from the fa-
13 cility is first eligible for such payments.

14 “(e) AMOUNT OF PAYMENT.—

15 “(1) IN GENERAL.—Payments made by the
16 Secretary under this section to the owner or oper-
17 ator of a qualified renewable energy facility shall be
18 based on the number of kilowatt hours of electric en-
19 ergy generated by the facility through the use of
20 solar, wind, biomass, or geothermal energy during
21 the incentive period. For any facility, the amount of
22 such payment shall be 1.5 cents per kilowatt hour,
23 adjusted as provided in paragraph (2).

24 “(2) ADJUSTMENTS.—The amount of the pay-
25 ment made to any person under this section as pro-

1 vided in paragraph (1) shall be adjusted for inflation
2 for each fiscal year beginning after calendar year
3 1999 in the same manner as provided in the provi-
4 sions of section 29(d)(2)(B) of the Internal Revenue
5 Code of 1986, except that in applying such provi-
6 sions the calendar year 1999 shall be substituted for
7 calendar year 1979.

8 “(3) DUPLICATE BENEFITS.—The amount of
9 the payment made to any person under this section
10 for any facility in any taxable year shall be reduced
11 by the amount that such person receives as a tax
12 credit for such facility in that taxable year under
13 section 45 or section 29 of the Internal Revenue
14 Code of 1986.

15 “(f) SUNSET.—No payment may be made under this
16 section to any qualified renewable energy facility after the
17 expiration of the period of 20 fiscal years beginning with
18 the first full fiscal year occurring after the date of enact-
19 ment of this Act, and no payment made be made under
20 this section to any such facility after a payment has been
21 made with respect to such facility for a period of 10 fiscal
22 years.

23 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Secretary to carry

1 out the purposes of this section such sums as may be nec-
2 essary for each of the fiscal years 2000 through 2004.”.

3 **SEC. 702. NET METERING.**

4 (a) IN GENERAL.—Title II of the Public Utility Reg-
5 ulatory Policies Act of 1978 is amended by adding the
6 following new section after section 213 and redesignating
7 section 214 as 215:

8 **“SEC. 214. NET METERING.**

9 “(a) DEFINITIONS.—For purposes of this section:

10 “(1) The term ‘eligible on-site generating facil-
11 ity’ means a facility on the site of a retail electric
12 consumer with a peak generating capacity of 20 kilo-
13 watts or less that is fueled solely by solar energy,
14 wind, biomass, or geothermal.

15 “(2) The term ‘net metering service’ means
16 service to a retail electric consumer under which
17 electric energy generated by that consumer from an
18 eligible on-site generating facility and delivered to
19 local distribution facilities through the same meter
20 through which purchased electric energy is received
21 may be used to offset electric energy provided by the
22 retail electric supplier to the retail electric consumer
23 during the applicable billing period. In no event shall
24 the net electric energy bill be less than zero during
25 the applicable billing period.

1 “(3) The terms ‘local distribution company’,
2 ‘retail electric consumer’, and ‘retail electric sup-
3 plier’ have the meanings given such terms in section
4 3 of the Federal Power Act.

5 “(b) REQUIREMENT TO PROVIDE NET METERING
6 SERVICE.—Each retail electric supplier shall make avail-
7 able upon request net metering service to any retail elec-
8 tric consumer that the supplier currently serves or solicits
9 for service if the retail electric consumer pays any costs
10 associated with providing such service.

11 “(c) STATE AUTHORITY.—This section does not pre-
12 clude a State from imposing additional requirements con-
13 sistent with the requirements in this section, including the
14 imposition of a cap limiting the amount of net metering
15 available in the State. Nothing in this Act or any other
16 Federal law preempts or otherwise affects authority under
17 State law to require a retail electric supplier to make avail-
18 able net metering service to a retail electric consumer
19 which the supplier serves or offers to serve.”.

20 **SEC. 703. STATE RENEWABLE ENERGY PORTFOLIO STAND-**
21 **ARDS.**

22 Nothing in this Act or any other Federal law affects
23 the authority of a State to require that a specific percent-
24 age of the electric energy sold by retail electric suppliers
25 to retail electric consumers in that State be generated by

1 solar energy, wind, biomass, geothermal, or any combina-
2 tion thereof, or to require such suppliers to purchase
3 tradable credits to satisfy all or a portion of such require-
4 ment. Upon application of two or more States, the Sec-
5 retary of Energy may establish a system for the trading
6 of such credits, consistent with State law.

7 **TITLE VIII—PROVISIONS RELAT-**
8 **ING TO INTERNAL REVENUE**
9 **CODE**

10 [Text of title VIII identical to text of title VIII of
11 H.R. 2944]

12 **TITLE IX—MISCELLANEOUS**
13 **PROVISION**

14 **SEC. 901. STUDY.**

15 The Secretary of Energy shall report to the Congress
16 within two years after the enactment of this Act on the
17 extent to which actions taken by the States have removed
18 regulatory and statutory barriers to interstate commerce
19 in electric energy. The report shall describe any remaining
20 barriers to interstate commerce and shall make rec-
21 ommendations to the Congress for additional action that
22 may be necessary to lower or eliminate barriers to inter-
23 state commerce in electric energy consistent with the de-
24 velopment of a fully competitive marketplace.

1 **SEC. 902. STUDY OF STATE REGULATION.**

2 The Federal Energy Regulatory Commission shall
3 study State regulation of the transmission component of
4 bundled retail sales of electric power and submit a report
5 to Congress containing the results of such study. The
6 study shall examine whether such regulation results in
7 undue discrimination or preference in the transmission of
8 electric energy in interstate commerce or in the sale of
9 electric energy at wholesale in interstate commerce and
10 make recommendations on amendments to Federal law.